

March 31, 2015

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

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

Dear Senator Vitter and Ranking Member Boxer:

We the 57 undersigned environmental and occupational health, environmental justice, and public interest organizations and businesses have worked for many years to reform chemical laws, including the federal 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 Udall-Vitter bill (S. 697), 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 respectfully oppose this bill.

S. 697 would fail to provide a framework essential to securing much needed health protections that have been lacking for nearly 40 years under current law. At the same time, the measure would undermine a number of vital state protections. S. 697 could have a crippling effect on every state's longstanding duty to regulate toxic chemicals to protect its own residents.

Many of the undersigned 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 robust action to protect citizens from very real environmental threats. S. 697, in contrast, preempts states from taking action on chemicals that are undergoing EPA review — even before EPA makes a final assessment on the safety of those chemicals — denies states co-enforcement authority, and may even preempt states from taking actions on chemicals under clean air and water laws.

We also are troubled by the fact that S. 697 would not explicitly protect communities affected by legacy chemical contamination, or by chemical disasters such as that which contaminated the Elk River in West Virginia in 2014. Although S. 697 requires consideration of “reasonably foreseeable” chemical exposures, there is no requirement to assess the exposures and risks that might result from decades-old contamination or from an unintended incident. Additionally, S. 697 would not explicitly require EPA to consider the cumulative burden of chemical pollution for residents of highly polluted communities, which is essential for people residents living near contaminated industrial and military sites all over the country. Consideration of cumulative impacts is also important for people disproportionately exposed to chemicals through the food

chain and from the migration of chemicals through the environment even if they do not live near polluted sites.

Although modified, the safety standard in S. 697 still retains a core element of TSCA's current weak safety standard, "unreasonable risk of harm," rather than using more health-protective "reasonable certainty of no harm" language. This gives us great pause given the way courts have interpreted "unreasonable risk." S. 697 is, at best, ambiguous about whether EPA must consider costs and benefits when determining if a chemical poses "no unreasonable risk of harm." Even if the standard purports to exclude consideration of costs, EPA would likely be required to take them into account costs when developing risk management rules to reduce exposures to chemicals that fail the safety standard. For example, S. 697 *explicitly* requires a cost-benefit analysis upon industry request for any chemical ban or phase-out.

S. 697 lacks strict deadlines that can ensure that EPA can in fact make meaningful progress reviewing and regulating, if necessary, hundreds of chemicals of concern. It would require only that EPA *start* reviews of 25 chemicals within five years and would allow the agency at least seven years to review each substance. There is no clear deadline for implementing restrictions, phase-outs, or bans of even the most toxic chemicals. S. 697 would allow manufacturers to receive expedited review of their favored chemicals if they are willing to pay a fee, but it would not require expedited review for asbestos or persistent, bioaccumulative and toxic chemicals.

S. 697 adds troubling hurdles to regulating chemicals in products. Under S. 697 EPA would have to show that the public has "significant exposure" to a chemical in order to regulate a product that contains it, such as foam furniture laced with toxic flame retardants. If we are committed to protecting the public from harmful chemical exposures, EPA must have ready tools to regulate them as the public can be expected to come in contact with them.

S. 697 does nothing to address the problematic standard of judicial review under the current TSCA. EPA decisions on chemical safety would still be required to meet the "substantial evidence" standard rather than the more common "arbitrary and capricious" standard. In practice, this can be expected to add further delays to regulating hazardous chemicals, or thwart EPA's efforts to do so altogether.

Finally, S. 697 does not ensure that EPA's chemical safety review program is adequately funded. Instead, S. 697 requires that industry generate only 25 percent of the total cost to EPA, with a cap of \$18 million per year. That amount is clearly insufficient. S. 725, by contrast would require that chemical companies pay their fair share, which is necessary for ensuring EPA assess the 1,000 chemicals it has determined may pose a risk to human health.

For these and other reasons the S. 697 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 Miller  
Executive Director, Alaska Community Action on Toxics

Robyn O'Brien  
Founder  
AllergyKids Foundation

Katie Huffling  
Program Director  
Alliance of Nurses for Healthy  
Environments

Andrew Behar  
CEO  
As You Sow

Linda Reinstein  
President  
Asbestos Disease Awareness Organization

Heather Cantino  
Steering Committee Chair  
Athens County (OH) Fracking Action  
Network

Karuna Jagger  
Director  
Breast Cancer Action

Rebecca Roter  
Chairperson  
Breathe Easy Susquehanna County

Deborah Cowden  
Board Chair  
Buckeye Forest Council

Catherine Porter  
Policy Director  
California Healthy Nail Salon Collaborative

Wes Gillingham  
Program Director  
Catskill Mountainkeeper

Ronald White  
Director of Regulatory Policy  
Center for Effective Government

Colin O'Neil  
Executive Director  
Center for Food Safety

Sharyle Patton  
Director  
Commonweal Biomonitoring Resource  
Center

Lois Gibbs  
Executive Director  
Center for Health, Environment & Justice

Barbara Warren  
Executive Director  
Citizens' Environmental Coalition

Kathleen A. Curtis  
Executive Director  
Clean and Healthy New York

Mark S. Rossi  
Co-Director  
Clean Production Action

Jennifer Krill  
Executive Director  
Earthworks

Judy Braiman  
President  
Empire State Consumer Project

Ken Cook  
President  
Environmental Working Group

Jeanne Economos  
Pesticide Safety and Environmental Health  
Project Coordinator  
Farmworker Association of Florida

Julia DeGraw  
Northwest Organizer  
Food & Water Watch

Dave Murphy  
Executive Director  
Food Democracy Now!

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

Denny Larson  
Executive Director  
Global Community Monitor

Daniel Parshley  
Project Manager  
Glynn Environmental Coalition

Laura Weinberg  
President  
Great Neck Breast Cancer Coalition

Fran Teplitz  
Executive Co-Director; Business, Investing  
& Policy  
Green America

Rick Hind  
Legislative Director  
Greenpeace

Eric Uram  
Executive Director  
Headwaters

Claire L. Barnett  
Founder and Executive Director  
Healthy Schools Network, Inc.

Karen Joy Miller  
President  
Huntington Breast Cancer Action Coalition,  
Inc.

Jamie Harvie  
Executive Director  
Institute for a Sustainable Future

Steven G. Gilbert  
Director  
Institute of Neurotoxicology and  
Neurological Disorders

Jaydee Hansen  
Senior Policy Analyst  
International Center for Technology  
Assessment

Tracy Gregoire  
Coordinator Maine Healthy Children's  
Project  
Learning Disabilities Association of Maine

Anne Rolfes  
Founding Director  
Louisiana Bucket Brigade

Ruth Berlin  
Executive Director  
Maryland Pesticide Education Network

Michael T. Bender  
Director  
Mercury Policy Project

Ronnie Cummins  
International Director  
Organic Consumers Association

Maya Nye  
Executive Director  
People Concerned About Chemical Safety

Judy Hatcher  
Executive Director  
Pesticide Action Network

Catherine Thomasson  
Executive Director  
Physicians for Social Responsibility

Ted Schettler, Science Director  
Rebecca Gasior Altman, PhD, Director  
Science and Environmental Health Network

Kathleen Burns  
Director  
Sciencecorps

Deborah Thomas  
Executive Director  
ShaleTest

Ashley Orgain  
Corporate Consciousness Manager  
Seventh Generation

Judi Shils  
Executive Director  
Teens Turning Green

Robin Schneider  
Executive Director  
Texas Campaign for the Environment

Juan Parras  
Executive Director  
Texas Environmental Health and Justice  
Advocacy Services

Carol F. Kwiatkowski  
Executive Director  
The Endocrine Disruptions Exchange

Gary Ruskin  
Executive Director  
U.S. Right to Know

Cecil D. Corbin-Mark  
Deputy Director/Director of Policy  
Initiatives  
WE ACT for Environmental Justice

Henry Clark  
Director  
West County Toxics Coalition

Erin Switalski  
Executive Director  
Women's Voices for the Earth

Gail Bateson  
Executive Director  
Worksafe Inc.