Message

From: Jones, Jim [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C32C4B9347004778B0A93A4CBD83FC8A-JJONES1]
Sent: 10/15/2013 1:11:31 PM
To: goldmanl@gwu.edu
Subject: RE: Phil Landrigan, FYI...

Thanks for sharing Lynn. This is a very thorough and thoughtful review (I wish everyone was so timely in their procrastination!). Jim

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From: lynn.r.goldman@gmail.com [mailto:lynn.r.goldman@gmail.com] **On Behalf Of** Lynn Goldman
Sent: Sunday, October 13, 2013 1:31 PM
To: Jones, Jim
Subject: Fwd: Phil Landrigan, FYI...

Dear Jim,
After much procrastination, FYI, these are comments I sent to Jonathan.
Lynn

---------- Forwarded message ----------
From: **Lynn Goldman** <goldmanl@gwu.edu>
Date: Sat, Oct 12, 2013 at 9:00 PM
Subject: Re: Phil Landrigan, FYI...
To: "Black, Jonathan (Tom Udall)" <Jonathan_Black@tomudall.senate.gov>

Dear Jonathan,
Sorry for my long silence however I have been extremely busy including international travel the last two weeks. I read through the bill and also spoke with Jim Jones. He and I had a great conversation.
I am very positive about what you have done with the bill.

In no particular order:
1. Standard: It is implicit rather than explicit but this really replaces the TSCA standard with a new health based one. In particular I note the first finding that "chemicals in commerce should be safe for their intended use" and that protection of children, as well as human populations generally and the environment, is in the forefront in the policy. Also of course section 3 (19) is good as long as "unreasonable risk" isn't interpreted to mean cost benefit balancing. This COULD BE more explicit in the bill but even better would be some "report language" (preferably negotiated between Boxer and VItter's people) clarifying what this means today but not tying EPA to perpetual use of today's testing and risk assessment models. Either report language, or clarification within the bill, will be needed (in my opinion) to get the support that you need for passage. Cost benefit analyses should not be included in safety determinations even though they are often considered in selecting among options for risk management. A statute that is analogous is the Safe Drinking Water Act which requires that the safety determinations be based on health risks alone, but allows for the application of other considerations (e.g. "feasibility") in risk management. Or the Clean Air Act regulation of air toxics which is based on Maximum Available Control Technology.

2. Authority to Obtain Data for Existing Chemicals: Excellent. I love the data call-in provision. It was also in the original bill, of course. I think that the bill takes a sensible approach in requiring that the EPA establish a process for (1) identifying which chemicals are actually active in commerce and (2) prioritizing those chemicals active in commerce for review, safety assessments and safety determinations. EPA should be able to start with the prioritization work it already has begun rather than forcing it to first reset the inventory and develop a bunch of new science policies.

3. Chemical Reviews: I think it important that this process be done very thoroughly and iteratively over time. Specifically: (a) New chemicals added to the list should be re-reviewed at some predictable time in the future, e.g., perhaps 20 years hence, and sooner if there are adverse safety signals; (b) ALL chemicals in commerce should receive review within some defined time period, perhaps, 20 years. Better to give them a longer term deadline and let them develop the schedule than to try to micromanage the schedule ahead of time. EPA should be getting an annual update of which chemicals are in commerce (see 4) and tweaking the schedule accordingly.

4. Reporting/inventory: The inventory of chemicals actively in commerce should include ALL chemicals regardless of production volume and regardless of the "smallness" of the business that produces them. Reporting chemical production is NOT burdensome to small businesses and we probably are missing very important information about chemicals that are produced perhaps at smaller quantities but to which there are important exposures. I think that the language about reporting needs to be as explicit as the language in EPCRA that mandates the TRI; the periodic battles between EPA and the OMB over the Inventory Update Rule not only are a ridiculous time sink but also always result in compromising the public's health, and right to know.

5. Risk Management: The new Section 6 is a major step forward in terms of relieving EPA from the necessity of conducting "least burdensome" analyses of "all" regulatory options, which is, of course impossible. I don't like the requirement for EPA to conduct cost benefit analyses for a couple of reasons. One, where does EPA obtain information about benefits? When I tried to ban acrylamide for use as sewer grout, industry came up with all kinds of statements that were completely unsupported by any kind of independent science review, and that we were forced to use in such analyses. At a minimum economic information needs to be included in 3(8) to make it clear that this information also has to meet a standard of "best available science". Two, I realize that OMB would force the EPA to do cost benefit analyses for any "significant" rules however would having this requirement in statute subject EPA to procedural and legal challenges based on the adequacy of such analysis? Three, I don't like that these analyses would be the basis for EPA decisions to ban or phase out the use of specific substances. Especially, that decision should be risk-based, like other decisions under TSCA.

6. Deadlines: The bill needs more deadlines. See the above. I think it important to sketch out the entire process you expect EPA to follow and establish a deadline for each step. Otherwise, EPA will get bogged down in public meetings, notice and comment, SAB meetings, NAS reports, OMB review of guidance documents, and so forth.

7. Timetable for safety assessments and determinations: Look for EPA to commit to a process similar to the reregistration process for pesticides in which the risk assessment and risk management are promulgated at the same time.

8. Fees: (1) need to go straight to EPA and not the General Fund; (2) need to include a COI escalator so that they remain reasonable; (3) currently are MUCH too low for new chemicals; (4) need to be collected for existing chemicals for maintaining status of being in commerce. I suggest an initial fee, an annual fee, and a fee for the periodic renewals that I think are very important. The fee for annual renewals must cover EPA costs for handling reports of adverse effects, for reprioritizing, for development of improved test standards, for enforcing regulations that assure the integrity of testing labs, and so forth.

9. Enforcement: Current enforcement of TSCA is very weak, weaker than EPA would admit. Many companies have failed to provide reports of adverse effects. The penalties need to be higher and DOJ should be able to bring criminal cases. EPA's ability to inspect test labs has been pathetic. I don't feel that the government has to do all of the tests but I do think that the government has to assure that the tests are being done properly. The penalties are way too low. Please show me anything else on the market that costed $25,000 in 1976 and now goes for $37,500, or $50,000. These amounts are a pittance and won't motivate compliance

nor major enforcement efforts. A limit of $250,000 or 5 years for WILLFULLY causing serious bodily injury or putting them in danger of death is ridiculous. (Section 15)

10: Preemption. Section 16 (d) why august 2003? This section is so much better than the prior draft but probably needs to more explicitly exempt Prop 65 (or could be interpreted to do so via report language I suppose.) If I had my druthers I would not require that EPA grant "approval for a waiver" but rather have a presumption that if the EPA refuses to act on a petition from a state, or to provide a justification for it's inaction, that the state can go forward and regulate the manufacturing and/or processing of a chemicals. The procedure allowing judicial review gets you there, but it's far more burdensome for the states.

Let me know if I can be helpful in any way.

Lynn

On Fri, Oct 11, 2013 at 4:56 PM, Black, Jonathan (Tom Udall) <Jonathan_Black@tomudall.senate.gov> wrote:

I had a very good conversation with him today and sent him a confidential copy of the bill. I asked that he keep it confidential, but permitted him to speak with you about it since you two have collaborated on a number of things together.

Also! I delivered a copy to Sen. Boxer's staff on Wednesday! My boss spoke to Chairman Boxer and mentioned we had made progress with Vitter. Her staff asked to see it. I haven't heard back from them yet, but I'm keeping my fingers crossed that they agree it is progress.

Thanks,

---Jonathan

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Lynn R. Goldman, M.D., M.P.H.,M.S.
Dean, GW SPHHS

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