

**An Introduction and Overview As to
Why SEER Formed a Special Committee on TSCA Reform
and What the White Paper Contributes to the TSCA Debate**

February 14, 2011

The Toxic Substances Control Act (TSCA) was enacted in 1976, and remains largely unchanged with regard to the management of industrial chemicals. Whether this fact evidences a durable federal law that has withstood the test of time or proof that our domestic chemical management law is out of date and in need of modernization has been the subject of vigorous debate for years. What is less open to debate is that Congress, the U.S. Environmental Protection Agency (EPA), the business community, and environmental and public health advocates of all varieties seem more committed now than ever to tackling the difficult task of amending TSCA.

Several signs point in this direction.

First, the 111th Congress has scheduled more hearings on various aspects of TSCA than any predecessor. Since February 2009, there have been an unprecedented seven hearings on topics ranging from the current science on public exposure to toxic chemicals to obtaining business perspectives on reforms.¹

¹ See House Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection hearing on “Revisiting the Toxic Substances Control Act of 1976” (Feb. 26, 2009); House Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection hearing on “Prioritizing Chemicals for Safety Determination” (Nov. 17, 2009); Senate Committee on Environment and Public Works and Subcommittee on Superfund, Toxics and Environmental Health joint hearing on “Oversight Hearing on the Federal Toxic Control Substances Act” (Dec. 2, 2009); Senate Committee on Environment and Public Works Subcommittee on Superfund, Toxics and Environmental Health hearing on “Current Science on Public Exposures to Toxic Chemicals” (Feb. 4, 2010); House Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection hearing on “TSCA and Persistent, Bioaccumulative, and Toxic Chemicals: Examining Domestic and International Actions” (Mar. 4, 2010); Senate Committee on Environment and Public Works Subcommittee on Superfund, Toxics, and Environmental Health hearing on “Business Perspectives on Reforming U.S. Chemical Safety Laws” (Mar. 9, 2010); Senate Committee on Environment and Public Works hearing on “Hearing on the Government Accountability Office’s Investigation of EPA’s Efforts to Protect Children’s Health” (Mar. 17, 2010).

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Second, on April 15, 2010, Senator Lautenberg introduced sweeping legislation amending TSCA. The proposed legislation amends virtually every core TSCA provision in ways that reflect considerable thought and commitment.

Also on April 15, Representatives Waxman and Rush circulated a “discussion draft” of companion House legislation amending TSCA. Over the next several months, the House convened invite-only stakeholder meetings to discuss key aspects of the discussion draft.

Finally, a diverse group of stakeholders, including EPA, have each prepared and circulated detailed “TSCA reform principles” according to which TSCA reform legislation should be measured and on which such principles TSCA legislation should be based.

In light of these momentous events, and in anticipation of the initiation of TSCA reform legislation being pursued in earnest, American Bar Association (ABA) Section of Environment, Energy, and Resources (SEER) Chair John C. Cruden last year asked Lynn Bergeson, former Chair of SEER and its Committee on Pesticides, Chemical Regulation and Right-to-Know to organize and chair a Special Committee on TSCA Reform. The sole purpose of the Special Committee was to reach out to former EPA Assistant Administrators (AA) of the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) (renamed on April 22, 2010, the Office of Chemical Safety and Pollution Prevention (OCSPP)) and other senior EPA officials with hands-on experience in implementing TSCA and managing EPA’s program offices tasked with implementing TSCA’s many technical and challenging provisions. The expectation was that from the perspective of a group that has “been there, done that” with regard to managing TSCA’s implementation, the Special Committee could add invaluable insights on the formidable task that lies ahead, and assist Congress and other stakeholders in framing TSCA reform issues through a lens shaped by significant experience and EPA program office implementation expertise.

Importantly, the views and opinions expressed in this White Paper are the authors’ and do not reflect the views and opinions of SEER. In addition, John Cruden took no part in the organization and work of the Special Committee other than recruiting Lynn Bergeson and took no part in the preparation, use, or distribution of the Special Committee’s White Paper.

The Special Committee members represent a bi-partisan group of former senior EPA officials with deep and broad TSCA experience. The group included:

- James V. Aidala, who is now Senior Government Consultant, Bergeson & Campbell, P.C., Washington, D.C. Aidala served as AA for OPPTS (now OCSPP) under the Clinton Administration from 2000 until the end of the

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Administration in 2001. Prior to serving as AA, he was an Associate AA for OPPTS from 1993 until 2000.

- Charles M. Auer, who was the former Director of EPA’s Office of Pollution Prevention and Toxics (OPPT) and currently is President of Charles Auer & Associates, LLC.
- Lynn R. Goldman, M.D., M.P.H., Dean of the George Washington University School of Public Health and Health Services. Dr. Goldman served as AA for OPPTS from 1993 until 1999.
- James B. Gulliford, who is the Executive Director of the Soil and Water Conservation Society. Gulliford served as AA for OPPTS from 2006 until 2009.

After many months of work and deliberation, the White Paper the Special Committee on TSCA Reform prepared offers comment on various elements of the legislative debate regarding how to move TSCA reform forward. Rather than offer an independent set of “principles” similar to those offered by other constituencies, the Special Committee decided instead to “provide observations and cautions about select elements of the debate heard thus far.” The Special Committee reviewed several broad categories of issues pertinent to TSCA reform, including consideration of using the Food Quality Protection Act as a template for TSCA reform, EPA’s organizational capacity for undertaking and completing chemical assessments, what TSCA has accomplished over the years, the role of related global initiatives, and the need to keep the law flexible to accommodate evolving science. The views of the Special Committee are unique, tempered by the Committee members’ significant collective experience working within EPA administering the TSCA program and managing on a real-time basis the many challenges and opportunities TSCA implementation has inspired over the years.

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