

TOXIC SUBSTANCES CONTROL ACT

1871

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HEARING

BEFORE THE

SUBCOMMITTEE ON THE ENVIRONMENT

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 776

TO REGULATE COMMERCE AND PROTECT HUMAN HEALTH
AND THE ENVIRONMENT BY REQUIRING TESTING AND
NECESSARY USE RESTRICTIONS ON CERTAIN CHEMICAL
SUBSTANCES, AND FOR OTHER PURPOSES

OCTOBER 24, 1975

PART 2

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I am Orin Smith, president of the M. & T. Chemical Co., Inc. We are a specialty chemical producer. We are similar to that type of company that Senator Ford talked about earlier.

We do support the basic concept of this legislation, Senator. We do not believe that unreasonable risks should be taken to health and environmental areas. We accept the concept of premarket testing. We do it today and we do it prior not only to marketing, but prior to manufacturing as well.

I would like to concentrate on the specialty area. I guess to do that, I had better define what I mean by "specialty chemicals." It is a product designed to perform a certain task in a specific application, normally using a small volume (a few PPM's added to a larger product). Hence the total pounds of it sold is usually small. It is also typically designed to optimize a given company's product and is very often made for one company.

It is also normally unique to the manufacturer. If another supplier expects to solve the same problem, they will generally come up with another molecule. So there are not very many pounds to spread the testing cost over. That is really the heart of our problem.

We are a relatively large company in the specialty field. We employ over 2,300 people in 24 manufacturing locations and research locations in the United States and the world. We have come up with about 130 new products per year, only five of which are sold in large volume. Large volume is when you get to 800,000 or 900,000 pounds per year. The typical product is well below 100,000 pounds per year volume.

Of these 130 new products 60 tend to be new entities. This is an average over the last 5 years. Seventy tend to be mixtures and blends not containing a new chemical entity.

Our estimates of the initial screening and testing that would be required under the legislation would show a cost of about \$20,000 per screening. This would be \$1.2 million per year in cost. It has been estimated by EPA that 10 percent of the products tested would go on to extensive testing and they have estimated the cost per test to be \$200,000. That would be \$1.2 million of additional cost to M. & T.

Our experience shows that the cost of extensive testing is far more than \$200,000 a year, and some of the data submitted by MCA tend to support that. So the total cost to us (M & T) could easily be over 4 million a year, (assuming rigorous enforcement by EPA). If blends and formulations were also included under the act, as I understand they may be, the cost could be much higher. For one small company could approach \$6 million per year.

Hence, we see the threat that the average price increase on our products would be way over the 10 percent MCA talked about. We fear that some safe new products would not reach the market. We fear that in some cases a lot of development and testing marketing would be done overseas, so the commercial success of a product would be determined before essential testing had to be done.

In light of all this we have come up with a number of recommendations. First, we do endorse and encourage you to consider the recommendations of MCA and F. D. Snell.

Second, we would request that the legislation be limited to what we term high-risk chemicals. That would mean that simple mixtures or

formulations would be excluded. It would mean that minor modifications of existing products would be excluded, and it would also mean that intermediates, (products consumed internally never reaching the market) would be excluded as well as very small volume products and chemicals.

We would also request that some definitions be included in the bill which would define the economics that the EPA Administrator is supposed to consider, such as if 100,000 pounds of a product is the maximum to be used and the use were defined, and restricted, that the testing would by definition be limited to such things as the appropriate acute toxicity studies.

We would also request a strict protection on trade secrets. We would request that the chemical formulation, the molecular structure, proposed use and amount sold not be made available for all to see. I am particularly concerned about the effect overseas in some nations where companies are not bound by patents or agreements.

We would request also that the present submission of data only be required if the item is known or suspected to be hazardous. Otherwise, the data should be retained by the company and available for the periodic inspection by the appropriate agency.

In sum and substance we favor the intent of the legislation, but we would ask that the cost effects on the specialty chemicals, small volume products, be considered and that some assurances be provided that the Administrator will be reasonable in his interpretation of the act.

Thank you.

Senator TUNNEY. Well, thank you, Mr. Smith. I just would ask you, have you had an opportunity to speak personally—or have any members of your company—had an opportunity to speak with representatives of the EPA as to what their interpretation of the law is as to what they anticipate costs to be?

Mr. SMITH. Yes, Senator, we have. One case—I guess it was rather frightening to us. In one case we were told that a specific individual who would be primarily in charge of this was a reasonable man—we agree he is—and then one week later he was transferred. That kind of thing, you know.

That is what upsets us and with the uncertainties in the legislation, and in talking to members of the committee staff they had indicated that certainly if the Administrator was not reasonable, we would have recourse in court.

Our problem is since we can't afford to do the testing we can't afford to go to court either. So again our whole slant here is directed at the potential effect of this legislation on relatively small volume products as differentiated from commodities.

We felt that most of the data and information that had been supplied to the committee quite properly was directed at the large volume products.

Senator TUNNEY. I think the points you make with respect to the small volume producers are very good and I know that Senator Ford feels very strongly about this, too. He and I have talked about it. We have talked about it as it relates to the legislation's chances of passage in the Congress, or of the Commerce Committee.

We have gotten assurances from the Environmental Protection Agency that they plan to take into consideration the size of a business,