Congress of the United States
Washington, DC 20515

April 19, 2016

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

The Honorable Barbara Boxer
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Pallone, Jr
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Inhofe, Ranking Member Boxer, Chairman Upton, and Ranking Member Pallone:

We write today about a matter of significant importance to our constituents in Vermont: Reform of the Toxic Substances Control Act (TSCA). We would like to thank you for successfully passing bipartisan TSCA reform legislation in your respective committees and chambers, and we urge you to move quickly to conference and bring a strong bill forward for final passage.

The need for strong TSCA reform is very much on the mind of Vermonters, as perfluorooctanoic acid (PFOA) has recently been found in both drinking and surface water in the Vermont communities of North Bennington, Bennington, and Pownal. No one knows the full scope of the problem, as hundreds of wells and additional sites across the state are still being tested. There have been numerous similar reports of PFOA contamination in neighboring Hoosick Falls, New York, communities in New Hampshire, and across the United States.

PFOA is one of 62,000 chemicals that were already on the market in 1976 and were "grandfathered" under TSCA – effectively presuming them to be safe without any requirement that they be tested or reviewed for safety. The weakness of that approach is evident today, as there is mounting evidence of harm from exposure to PFOA. Meanwhile, Vermont and other states are just beginning to grapple with the consequences of finding high concentrations of this chemical in the environment, the product of varied manufacturing processes. Independent studies suggest the presence of PFOA in the blood of the vast majority of Americans, the result of exposure to the chemical through common household products. Of course, PFOA is just one of tens of thousands of chemicals for which there is insufficient and incomplete information.

Moreover, in the forty years since Congress passed TSCA, the Environmental Protection Agency (EPA) has placed meaningful restrictions on just six existing chemicals and four new chemicals. That is why we urge you to make the final version of TSCA as strong and comprehensive as possible. To that end, we would specifically call your attention to EPA Administrator Gina

PRINTED ON RECYCLED PAPER

McCarthy's letter of January 20, 2016, which discusses how to strengthen the most important provisions of TSCA.

Finally, our experience in Vermont shows us very clearly that the states must have independent authority to step in, especially where the federal government may have failed to act. Not surprisingly, in the wake of such a weak federal law, thirty-three states, including Vermont, have passed laws restricting the use of chemicals such as Bisphenol A (BPA), lead, mercury, flame-retardants and other substances. Many of these state laws, including Vermont's, take into account the health of vulnerable populations like pregnant women or children. We strongly believe that it would be wrong to undo these state laws, or to prevent future state laws from protecting public health.

We urge you to include minimal or no preemption of state action in the final bill. Specifically, we urge you to draw from the principles outlined in a January 2016 letter from twelve State Attorneys General:

1. States are not preempted until EPA has taken a final action;
2. Once EPA has taken a final action, the scope of state law preempted is no broader than the scope of EPA's action;
3. States are not preempted from continuing to establish requirements on chemicals pursuant to longstanding state laws;
4. States are not preempted from continuing to enforce existing requirements on chemicals;
5. State laws related to water quality, air quality or waste treatment or disposal are not preempted;
6. States are able to obtain a waiver to adopt requirements that are more protective than EPA's if the requirements do not unduly burden interstate commerce and do not make it impossible to comply with both state and federal law; and
7. States are be able to keep "cops on the beat" to co-enforce requirements that have been adopted by EPA.

Thank you again for your attention to this issue of great importance to both us and our constituents. When we have visited communities affected by the recent discovery of PFOA, the discussions inevitably turn to the broader issues raised by this contamination. In particular, we have been urged to reform federal law to prevent dangerous chemicals from ever again being carelessly pumped into the air and spilled into the waters of our cities and towns, and from being used in the everyday products we use in our homes.

We look forward to supporting a strong reform of the Toxic Substances Control Act when it comes before us for final consideration.

Sincerely;

PATRICK LEAHY
U.S. Senator

BERNARD SANDERS
U.S. Senator

PETER WELCH
U.S. Congressman