



## Where Is The Middle Ground On POPs, PIC, and LRTAP?

**I**n a Rose Garden ceremony at the beginning of his first term, President George W. Bush stood with Secretary of State Colin Powell and EPA Administrator Christie Whitman and urged quick ratification of the Stockholm Convention on Persistent Organic Pollutants. But five years later, the United States remains outside the treaty.

It is more than ironic that the United States was a leader in negotiating a trio of landmark toxics accords, all of which have strong domestic support but entered into force in the last three years without U.S. participation — the Stockholm POPs convention, the Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, and the Protocol on Persistent Organic Pollutants to the Long-Range Transboundary Air Pollution Convention, a treaty among northern hemisphere countries.

Being outside these critical agreements has several negative impacts. Because the United States is unable to participate as a state party in the implementation and evolution of the accords, both the global environment and the competitiveness of U.S. businesses are potentially at risk. The United States has been a world leader in chemical manufacturing and also in environmental law-making. It should be a major, active force in ensuring the effectiveness of the treaties — particularly as the lists of controlled substances expand — but we won't have a seat at the table.

Indeed, both the environmental community and the business community have been pushing for ratification for years. But in addition to approval in the Senate by a two-thirds vote, ratification will require amending two of our most important domestic environmental laws, the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act. And therein lies the difficulty that has kept the United States from being an active participant in treaties that most stakeholders agree should be ratified as promptly as possible.

The main concern of all parties appears to be the U.S. Environmental Protection Agency's authority to impose domestic controls that will conform to treaty standards as amendments to add new substances to the lists come forward. At issue here are TSCA and FIFRA's thresholds for regulatory intervention, as well as how costs and benefits will be measured in evaluating new chemicals.

Bills have made some progress in both the House and the Senate. This year, H.R. 4591, which would amend TSCA, was voted out of the Energy and Commerce Committee. H.R. 3849, which would amend FIFRA, has cleared the Agriculture Committee. On the other side of the Capitol, S. 2032, a FIFRA bill, is still in the Agriculture Committee.

With industry and the environmental community both pushing for ratification but still at loggerheads, where is the middle ground?

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regulatory bodies evaluate chemicals and then list those determined to be persistent organic chemicals or require prior informed consent for import. If the POP review committee lists a chemical, cancellation by ratifying nations is required unless the country opts out. FIFRA's lengthy and thorough evaluation could be superseded, and U.S. consumers would lose the benefit of an EPA registered chemical.

To insure that U.S. sovereignty and its well-established regulatory process are not preempted or undermined, implementing legislation that recognizes a middle ground is required. FIFRA's extensive requirements must be preeminent, at the same time taking into account legitimate concerns raised by the international community.

The crop protection industry believes that countries should have the option to exempt production and use of specific pesticides from these treaties and to require mitigation measures for pesticide use, provided such decisions are based on socio-economic and risk/benefit assessments. Any approach based solely on arbitrary banning or eliminating beneficial use pesticides must be avoided. In addition, any decision by an importing country under PIC should be applied without prejudice to U.S. exports so that both domestic manufacture in those countries and imports from all sources will cease. Evidence of international trade in a chemical must exist before subjecting it to a PIC listing.

Given the eagerness of some people to add chemicals to these lists regardless of the risk/benefit evaluation, it is reassuring that members of the House and Senate Agriculture Committees have been able to craft a compromise that maintains FIFRA preeminence while acknowledging treaty-based concerns. Legislation was reported out of the House Agriculture Committee on July 27 by a unanimous vote. A corresponding FIFRA bill is pending before the Senate Agriculture Committee.

To avoid the potential subjection of U.S. crop protection products to arbitrary bans and unfair trade barriers of other nations, it is vital that the U.S. ratify and implement the Rotterdam PIC and Stockholm POPs Conventions. Only in this way can the U.S. fully participate as a voting member in future Conferences of the Parties to the conventions. Or the United States will continue to participate as an observer while signatory countries impose their agenda.

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## Ideology Yields Abandonment Of Middle Ground

REP. HILDA L. SOLIS

The Stockholm Convention is an important step to protecting public health at home and abroad from highly toxic substances. Unfortunately, implementing it has become more about advancing ideology than developing good public policy. This extremism has left the middle ground abandoned and prospects of passing broadly supported implementing legislation empty.

H.R. 4591, which passed the House Energy and Commerce Committee on a near party line vote, undermines the intent of the convention. It contains an egregious cost-benefit standard which will virtually ensure no future persistent organic pollutant is regulated. It preempts the rights of our states to implement or maintain regulations which are more stringent than federal regulations — a right in most other environmental laws. It leaves our nation's most vulnerable communities, including minority and low-income Ameri-

cans, at risk and is broadly opposed by state attorneys general, public health advocates, environmental organizations, and labor groups.

The Bush administration is equally negligent. It has not drafted any language to make necessary changes to TSCA in the last two sessions of Congress. Between November 2004 and my subcommittee's hearing last March, the only contact from the administration was a letter promising to "work closely" on this issue. Testifying at that hearing, Assistant Secretary of State Claudia McMurray confirmed that the administration has not convened meetings with outside interests to resolve differences on implementing legislation. As a result, I find any call to action on implementing language by the Bush administration disingenuous.

Legislation I introduced represents a path forward. H.R. 4800 would effectively and efficiently allow for the implementation of the Stockholm Convention and the further regulation of substances agreed to by the United States. It tracks the treaty language and contains a standard that then Secretary of State Colin Powell wrote is consistent with the risk-based decisionmaking in chemical regulations under existing law. It is supported by the American Nurses Association, the National Hispanic Environmental Council, the lead U.S. negotiators, 11 state attorneys general, two dozen American Indian and Alaska Native tribes, the AFL-CIO, United Steelworkers, and more than 60 environmental and public health groups. Unfortunately the committee rejected my legislation on a party line vote.

I also offered my colleagues an opportunity to achieve the middle ground on implementing legislation. Prior to consideration of H.R. 4591 by the full Energy and Commerce Committee, I recommended a stakeholder process to resolve differences and move forward in a bipartisan manner. Unfortunately,

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my colleagues across the aisle, led by Representative Paul Gillmor, rejected this path and moved forward with their ideologically driven legislation.

Being party to the Stockholm Convention won't mean anything if the United States does not have meaningful, effective, efficient language to implement additions to the treaty if it chooses to do so. Unfortunately those that have embraced extremism in H.R. 4591 and refused dialogue have abandoned the middle ground and with it the possibility of moving implementing legislation. As we wind down the 109th Congress, perhaps my colleagues will learn a valuable lesson which applies across the board — ideology may garner votes and campaign contributions, but it does not yield good public policy.

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## POPs: The Purloined Compromise

BROOKS B. YEAGER

In the famous story of "The Purloined Letter" by Edgar Allan Poe, the epistle in question was ultimately found where it was least expected — in the most obvious place of all. The mysterious "middle ground" on POPs legislation can be found, I believe, in a similar place. To paraphrase Poe's inimitable detective M. Auguste Dupin, "It's been in plain view all along!"

Despite the four-year disagreement over implementing legislation, there is broad support for

U.S. ratification of the POPs treaty. The 2001 Stockholm Convention on Persistent Organic Pollutants seeks the elimination of some of the world's most dangerous chemicals — substances which, no matter where they are produced, end up contaminating the food chain globally — including in places such as the Arctic, the Everglades, and the Great Lakes. Though the United States has long since stopped production of the 12 POPs currently listed in the convention, Americans still experience their effects.

Our failure to ratify a treaty that we had a strong role in drafting hurts our national interest. It weakens the treaty's effort to restrict POPs, prevents us from playing our rightful role as a leader in global chemicals management, locks us out from helping to shape the treaty's operational mechanisms, and places our chemical industry at a disadvantage as the convention considers restrictions on future chemicals.

This last is the cause of the delay. The POPs treaty includes a forward-looking mechanism through which new chemicals can be identified as POPs, added to the appropriate annex in the treaty, and thus be made subject to the treaty's restrictions on manufacture and use. It is in the U.S. interest that this mechanism be workable, so that the treaty can be effective in the future. Since the U.S. is a major chemical manufacturer, it also in our interest that the adding process be scientifically rigorous and not subject to political whim.

Achieving appropriate protections on these points was a major focus for the U.S. negotiating team. In the end, we achieved our objectives on every point. The treaty sets out an adding mechanism that relies on careful scientific criteria, administered by a committee on which we can expect to play a powerful role once we ratify. Additionally, it requires a three-fourths majority of the treaty's parties to add a chemical, and allows any

party, including the United States, to prevent the application of a listing with which it disagrees.

The delay in ratifying the POPs treaty stems from an effort to add language to the implementing legislation that would give the U.S. chemical industry, in effect, a second layer of domestic procedural protections with which to fight future listings. This second layer actually adds little if anything to the multiple protections of U.S. sovereign authority already in the treaty. Instead, the new language, added to several of the implementing bills at the behest of the Bush administration, proposes novel regulatory standards that differ significantly from the standards in the treaty and would likely invite litigation. It also weakens the prospect that U.S. regulators would be able to meet our obligations to restrict even those new POPs whose listing we agree with.

The middle ground on this issue is, as I said, in plain view. Those who are concerned to protect the full range of U.S. regulatory discretion regarding new POPs should recognize that they can do so through the exercise of the protections that are written in to the treaty itself. This is the course proposed in the legislation offered by Representative Hilda Solis, H.R. 4800, which takes the most straightforward approach to implementing the POPs treaty of the various bills under consideration in the current Congress.

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