

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108-1598

THOMAS F. REILLY
ATTORNEY GENERAL

(617) 727-2200
www.ago.state.ma.us

February 28, 2006

The Honorable Joe Barton
Chair, House Committee on Energy & Commerce
2109 Rayburn House Office Building
Washington, DC 20515

The Honorable John D. Dingell
Ranking Member, House Committee on Energy & Commerce
2328 Rayburn House Office Building
Washington, DC 20515

Re: HR 4591 - POPs Treaty Implementation Legislation

Dear Chairman Barton and Congressman Dingell:

We submit this letter on behalf of the undersigned Attorneys General. The United States joined the Stockholm Convention on Persistent Organic Pollutants, commonly known as the "POPs Treaty," in 2001. The treaty represents an important step toward protecting our nation's citizens and our global neighbors from the risks posed by certain especially toxic substances that accumulate in the global environment.

Unfortunately, HR 4591, a bill to implement the POPs Treaty and other related international agreements, recently introduced by Congressman Paul Gillmor, Chairman of the House Subcommittee on Environment and Hazardous Materials, includes unduly broad preemption language that could severely limit states' abilities to protect their citizens from these toxic chemicals.

HR 4591 includes the following language designed to preempt state authority to regulate substances that become subject to the Treaty:

[N]o State or political subdivision may establish or continue in effect any requirement that is applicable to a POPs chemical substance or mixture or LRTAP POPs chemical substance or mixture . . . for which a listing under . . . the POPs Convention or . . . the LRTAP POPs Protocol has entered into force for the United States (except as permitted in section 116 of the Clean Air Act).



Although currently applicable federal law in this area does include some preemption of state authority, there is nothing equivalent to the sweeping impact of the proposed bill. Indeed, under the bill's language, state authority to regulate substances listed under the POPs Treaty could be preempted even if an exemption to the POPs Treaty allows continued use of a substance. We are especially concerned about such a possibility as we consider potentially toxic substances that states have already begun to regulate in the absence of federal regulation. A good example involves brominated flame retardants known as PBDEs that some states have already banned, and that many other states are considering banning. We urge you and other members of the Energy and Commerce Committee to ensure that this counterproductive preemption language does not become law.

The Gillmor bill also requires unacceptable EPA review procedures before any new POP would be regulated in the United States. Although the states recognize the value of EPA's additional analysis, the procedures set forth in the bill would duplicate the international review process and potentially delay important federal action. Under that process, the Persistent Organic Pollutant Review Committee, a group of experts in risk analysis chosen by the parties to the Treaty, including the United States, must conclude that a chemical needs to be regulated to protect human health and the environment before the substance is listed, a conclusion that is accorded very little weight in the review procedures under the bill.

As Georgetown University Law Professor Lisa Heinzerling highlighted in her testimony before the Committee on Rep. Gillmor's "discussion draft" of the bill, circulated on June 17, 2004, and in relevant respects identical to HR 4591, the bill does not require the United States to do anything in response to an international recommendation to list a new POP, or even impose a deadline for EPA to decide whether or not it will act. The bill also lacks any enforcement mechanism whatsoever to allow for challenges to EPA's decisions with respect to newly identified POPs that may later become subject to the treaty. This potential for sanctioned nonresponse to an international decision to list a new toxic substance as a POP is troubling.

In addition, HR 4591 includes an approach to cost-benefit balancing that Professor Heinzerling aptly describes as "systematically biased against environmental protection," particularly when it comes to protecting against pollutants like POPs. See Testimony of Georgetown Law Professor Lisa Heinzerling to the Subcommittee on Environment and Hazardous Materials, http://www.progressiveregulation.org/articles/Heinzerling_071504.pdf.

We believe that rather than erecting potentially insurmountable barriers against protecting people and the environment from the risks posed by POPs, as HR 4591 appears to do,

the implementing legislation should ensure both that states have the ability to protect themselves, and that EPA be required to act expeditiously when new substances are listed as POPs.

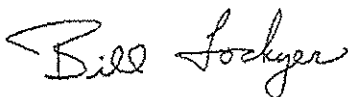
Very truly yours,



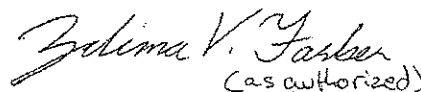
Thomas F. Reilly
Massachusetts Attorney General



Mike Hatch
Minnesota Attorney General



Bill Lockyer
California Attorney General

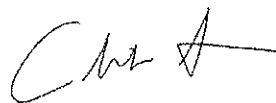


(as authorized)

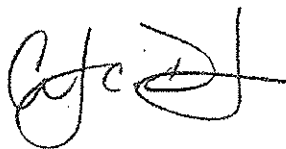
Zulima V. Farber
New Jersey Attorney General



Richard Blumenthal
Connecticut Attorney General



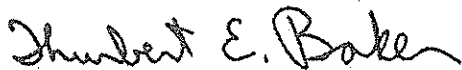
Eliot Spitzer
New York Attorney General



Carl C. Danberg
Delaware Attorney General



Hardy Myers
Oregon Attorney General



Thurbert Baker
Georgia Attorney General



Patricia A. Madrid
Attorney General of New Mexico



Lisa Madigan
Illinois Attorney General