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June 20, 2003

The Honorable Richard G. Lugar
United States Senate
Washington, DC 20510

The Honorable Joseph R. Biden, Jr.
United States Senate
Washington, DC 20510

Dear Senators Lugar and Biden,

Our organizations write in response to your Committee's hearing this week on the Stockholm Convention on Persistent Organic Pollutants (POPs). As organizations committed to protecting the environment and public health from toxic substances, we staunchly support the aims of this important environmental treaty, and have advocated domestically and abroad for its swift ratification and entry into force. At the same time, we believe that ratification by the United States must be coupled with the passage of full and effective implementing legislation, and we ask that your Committee include provisions in the resolution of ratification that will condition the Senate's advice and consent upon completion of such legislation.

The Addition of POPs is Central to the Treaty

As you know, the Stockholm Convention seeks to eliminate a group of dangerous chemicals that harm human health and the environment globally. Assistant Secretary of State Turner, in his oral statement before your Committee, said the treaty aims to protect human health and the environment from 12 chemicals often referred to as the "dirty dozen." This is true, but it is only the beginning.

The Stockholm Convention is a dynamic, forward-looking agreement. In addition to phasing out and eliminating the initial 12 POPs, it includes a science-based process to identify, assess, and control other dangerous POPs that warrant global concern. The United States has already banned most of the dirty dozen. Addressing the small group of additional POPs in the future will thus be among the United States' key Stockholm obligations.

POPs pose a hazard because of their toxicity to animals and people, their persistence in the environment and in the fatty tissues of living organisms, their ability to travel long distances on air and water currents, and their propensity to bioaccumulate in food chains. The 12 chemicals named in the treaty *and other POPs not yet listed* have become common contaminants of fish, dairy products, and other foods in the United States and around the world. Many Americans may now carry enough POPs in their bodies to cause serious health effects, including reproductive and developmental problems, cancer, and disruption of the immune system. Children in the most heavily contaminated areas, including Alaska and the Great Lakes region, are at particular risk.

Implementing Legislation Must Include an Effective “Adding Mechanism”

In a Rose Garden ceremony in 2001, President Bush announced his support for the Stockholm Convention, noting that it “shows the possibilities for cooperation among all parties to our environmental debates.” The Administration’s official treaty transmittal to the Senate in 2002, however, was unclear as to whether it would seek domestic legislative changes related to additional POPs, and a bill subsequently proposed by the White House failed even to recognize this crucial element of the treaty. This omission raises significant concerns for our organizations. In our view, a timely and effective mechanism that enables the United States to regulate POPs chemicals as they are added to the Convention is the most important component of the Stockholm Convention implementing legislation.

Over the past year, public interest groups and the chemical industry have worked closely with a bipartisan group of Senators in the Environment and Public Works Committee (EPW), including Senators Jeffords and Chafee, to craft legislation that includes the so-called POPs “adding mechanism.” While the Bush Administration has by now acknowledged the necessity of the adding mechanism and has participated in some of these discussions, recent OMB proposals would create an adding mechanism so cumbersome and regressive that it would be extremely difficult if not impossible for EPA to take action when POPs are added to the treaty.

A number of our organizations are continuing to work with EPW to achieve a legislative solution. After EPW develops an adding mechanism to govern industrial chemicals under the Toxic Substances Control Act (TSCA), that mechanism must be adapted to address the complexities of pesticide regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The mechanism must enable EPA to respond swiftly when new POPs are identified and added to the Convention, and to take prompt, health-protective action to address these chemicals domestically. We appreciate the hard work and perseverance of Senators Chafee and Jeffords in striving to address these issues. We remain hopeful that their legislation will include a robust, protective process to authorize the United States to regulate additional POPs effectively and efficiently.

Advice and Consent Should Be Conditioned on Complete Implementing Authority

The Senate has an obligation to ensure that the Stockholm Convention can be fully implemented in the United States. To achieve such an outcome, the Senate will need to hold the Administration firmly to its commitment to an effective adding mechanism.

It is not uncommon for the Senate to condition its advice and consent to an international agreement on the completion of appropriate legislative authority, including specific implementation issues. For example, in its resolution of ratification for the World Intellectual Property Organization Copyright Treaty and the World Intellectual Property Organization Performances and Phonograms Treaty, the Senate placed the following condition on ratification:

“The United States shall not deposit the instruments of ratification for these Treaties until such time as the President signs into law a bill that implements the Treaties, and that shall include clarifications to United States law regarding infringement liability for on-line service providers, such as contained in H.R. 2281.”

A similar condition would be appropriate for the Stockholm Convention, specifying the need for implementing legislation that includes an effective adding mechanism:

“The United States shall not deposit the instrument of ratification for this Convention until such time as the President signs into law a bill that implements the Convention, and that shall include changes to United States law that fully implement and give substantial weight to its Article 8 provisions for adding new persistent organic pollutants.”

The Stockholm Convention offers a rare example of consensus in the current international environmental policy arena. However, unless the Foreign Relations Committee and the full Senate insist upon domestic legislation that includes a timely and effective mechanism to enable the United States to regulate POPs chemicals as they are added to the Convention, the treaty will not provide the level of public health protections it was designed for, and the United States may be seen as skirting its most important Stockholm commitment. If this occurs, widespread environmental and public health support for the treaty will not be assured.

Please do not hesitate to contact us if we can be of assistance in this important endeavor. Contact Karen Perry at Physicians for Social Responsibility, 202-667-4260 x249 or kperry@psr.org.

Sincerely,

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cc: The Honorable Chuck Hagel
 The Honorable Lincoln Chafee
 The Honorable George Allen
 The Honorable Sam Brownback
 The Honorable Michael B. Enzi
 The Honorable George V. Voinovich
 The Honorable Lamar Alexander
 The Honorable Norm Coleman
 The Honorable John E. Sununu
 The Honorable Paul S. Sarbanes
 The Honorable Christopher J. Dodd
 The Honorable John F. Kerry
 The Honorable Russ Feingold
 The Honorable Barbara Boxer
 The Honorable Bill Nelson
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 The Honorable Jon S. Corzine
 The Honorable James M. Inhofe
 The Honorable James M. Jeffords
 The Honorable Thad Cochran
 The Honorable Tom Harkin
 The Honorable Ted Stevens
 The Honorable Lisa Murkowski