

**CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW · OCEANA
PHYSICIANS FOR SOCIAL RESPONSIBILITY · SIERRA CLUB
WORLD WILDLIFE FUND**

September 27, 2002

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

The Honorable Robert Smith
Ranking Member, Senate Environment and Public Works Committee
United States Senate
Washington, DC 20510

RE: Proposal to allow PCB imports through Stockholm Convention implementing legislation

Dear Senator Jeffords and Senator Smith:

We applaud your efforts to craft effective implementing legislation for the Stockholm Convention on Persistent Organic Pollutants (POPs). This important treaty will move the United States and other nations forward with a united agenda to rid the world of a dangerous class of chemicals that threaten not only ourselves, but also our children and our children's children.

We are, however, deeply concerned about efforts by some to use the POPs treaty implementing legislation as an opportunity to weaken the Toxic Substances Control Act (TSCA), which currently prohibits large-scale importation of PCBs (polychlorinated biphenyls) into the United States. Any amendment to this provision would be legally unnecessary, and would potentially result in an escalation of hazard through an increase in PCB movement around the globe, an increase in PCB incineration and landfilling in the United States, and the stifling of efforts to improve worldwide capacity to destroy PCBs using environmentally sustainable, non-incineration technologies. For these reasons, we urge you to oppose any amendment to TSCA section 6(e) that would permit broader importation of PCB wastes.

The Proposed Amendment is Legally Unnecessary

The international movement of PCBs and other POPs wastes for environmentally sound disposal is certainly envisioned under the Stockholm Convention. However, the Convention imposes no specific obligation—on the United States or any other nation—to import PCBs for this purpose. If the United States should decide that it wishes to import waste PCBs, domestic authority for this already exists. TSCA section 6(e)(2)(B) provides EPA with the authority to “authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of any [PCB] if the Administrator finds that such manufacture, processing, distribution in commerce, or use . . . will not present an unreasonable risk of injury to health or the environment.” Under this section, “manufacture” includes import. Thus, the EPA Administrator

has existing statutory authority to promulgate a rule to allow the import of PCB wastes for disposal if s/he chooses.

To date, the Administrator has not done so. However, any person wishing to import PCBs can petition EPA, under TSCA section 21, to initiate a rulemaking that would allow such import under the statutory authority granted by section 6(e)(2)(B).

The Proposed Amendment Could Increase Hazard Through Transport

We support the *proximity principle*, which holds that toxic waste should be managed, treated, and disposed of close to the site of generation. The United States, Canada, and Mexico have agreed to the proximity principle under the NAFTA Action Plan on PCB Management. We are concerned that a transport accident releasing PCBs off the Pacific coast, into the Gulf of Mexico, or in other locations, would threaten our nation's fisheries, fishing stocks, and our fishing industry. Similar concerns led the Sierra Club to oppose Department of Defense shipments of PCBs into our western ports in 1999. Acting in accordance with the proximity principle reduces the risks associated with transport of PCB waste and prevents imposing on one community or nation the environmental and human health risks of wastes generated by another.

The Proposed Amendment Could Lead to Increased Pollution Through Incineration and Landfilling

Incineration and landfilling are the primary methods of PCB disposal employed in the United States today. These methods result in releases of PCBs (and potentially other POPs, such as dioxin) to land, air, and water. PCB pollution accumulates in the food chain, contaminating fish and other organisms. Many of our nation's waters remain under human health advisories as a result. When people consume contaminated fish, exposure to PCBs creates health problems, especially for young children and infants exposed in the womb. Recent studies link low levels of exposure to PCBs in the womb to learning disabilities and developmental problems. PCBs are carcinogenic and cause cancer at very low levels of exposure.

Communities of color, poor neighborhoods, and those already overburdened by heavy industry are often targeted for waste treatment facilities. Poor people and indigenous peoples also suffer disproportionately from the effects of PCB pollution; incineration in the northern hemisphere releases pollutants which are swept northward by prevailing winds and accumulate in fish harvested and consumed by people living near the Great Lakes, by Alaskans, and by Canadians.

The case of the Swan Hills incinerator in Edmonton, Alberta, Canada underscores the dangers inherent in incineration, as well as the injustice of importing PCB waste. When the Canadian government permitted the operation of the Swan Hills incinerator, this facility immediately started burning PCBs imported from Japan. The local workers at the facility soon had elevated PCB levels in their blood, PCB spills and leaks became routine, and fugitive emissions from the facility severely contaminated animals and plants up to 5 kilometers away. Japan, ironically, is capable of managing its own waste and has a licensed alternative (i.e., non-incineration) treatment facility up and running.

The Proposed Amendment Could Stifle Efforts to Employ Non-Incineration Technologies Worldwide

Our organizations and many others have been working to promote the deployment of advanced, mobile technologies to treat stockpiles of pesticides, dioxin, PCBs and other POPs. These are now on-line in several locations.

PCBs were manufactured and distributed throughout the world. According to UNEP, worldwide production of PCBs (excluding the Soviet Union) topped 1.5 million tonnes. Today there are stockpiles of waste PCBs and PCB-containing equipment around the globe. Currently, however, the domestic market for PCB waste treatment is so depressed that the incineration industry is seeking access to other countries' PCBs. It would be tragic if domestic implementation of the Stockholm Convention provided the fuel for the incineration industry and a stumbling block to the global deployment of improved technologies.

Nations such as the United States with the resources to move the world beyond the old "bury-and-burn" technologies have an obligation to transform their own waste industry and to assist nations with fewer resources to procure and safely operate up-to-date waste destruction technologies. It is also in the United States' national interest to ensure that PCBs and other POPs everywhere are destroyed completely and safely, as these chemicals do not respect boundaries and will damage the health of Americans and our natural resources even if they are released from another continent.

Conclusion

Importing PCBs for disposal in U.S. incinerators and landfills may seem like the easy way out of the global PCB problem. Ultimately, however, this "solution" is likely to create even greater problems for all of us. We urge you to oppose any amendment to TSCA section 6(e) that would permit broader importation of PCB wastes. Thank you for your attention to these concerns.

Sincerely,

Glenn Wiser
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CC: Members of the Senate Environment and Public Works Committee