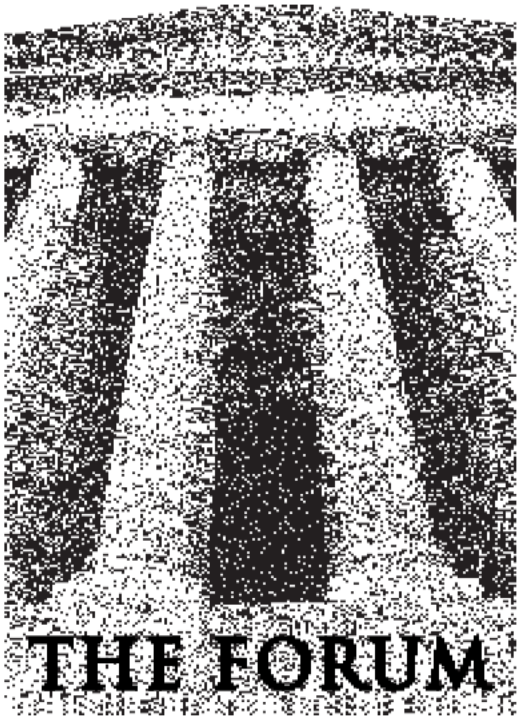

Where Is The Middle Ground On POPs, PIC, and LRTAP?

In a Rose Garden ceremony at the beginning of his first term, President George W. Bush stood with Secretary of State Colin Powell and EPA Administer 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 lawmaking. 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?

Daryl Ditz
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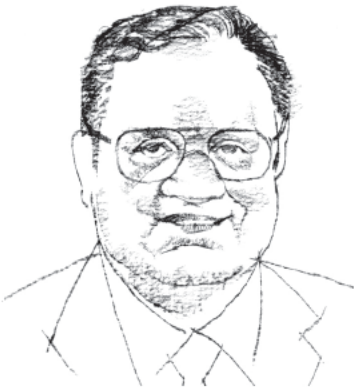

Rep. Paul Gillmor
Chairman
House Subcommittee on Environment
and Hazardous Materials

Stephen F. Harper
Corporate Director,
EHS and Energy Policy
Intel Corporation

Claudia A. McMurray
Assistant Secretary for Oceans,
Environment, and Science
Department of State

Douglas T. Nelson
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CropLife America

Rep. Hilda L. Solis
Ranking Member
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To Find Middle, Steer Back From The Right

DARYL DITZ

The basic outlines of bipartisan agreement on POPs legislation were already apparent when the United States signed the Stockholm Convention back in 2001. Industry and environmental representatives agreed to focus on the narrow changes needed to implement these international chemicals agreements — and to defer addressing long-standing problems with the larger universe of regulated chemicals.

This pragmatic beginning could have yielded an easy victory for a White House that had just abandoned the Kyoto climate accord. Unfortunately, U.S. ratification of the POPs treaty was ultimately a victim of overreaching by House Republicans who saw this as another vehicle for advancing a profoundly anti-environmental agenda.

The central issue is whether and how the United States responds as chemicals are added to the two POPs agreements. The Bush administration had made clear its intention to rely on the "opt-in" provision under the Stockholm treaty. As a result the U.S. government would never be obliged to regulate a new POP against its will.

Specific amendments to TSCA and FIFRA are still necessary. Most importantly EPA must have the authority to eliminate or otherwise control newly listed POPs for which the president decides to opt-in. According to the Government Accountability Office, EPA is effectively powerless to ban existing industrial chemicals, including POPs. Under TSCA's Section 6, EPA has not banned a single chemical since 1990.

FIFRA is hardly better for POPs pesticides. Consider the pesticide lindane, which EPA began reviewing in 1977 but permitted for agricultural use until August 2006. By this time, 52 nations had banned this persistent, bio-accumulative, and toxic substance. FIFRA also provides EPA with no authority for halting export of banned pesticides, as required under the Stockholm Convention. Before the Senate can give its advice and consent to ratifying these POPs agreements, Congress must patch these glaring faults.

Sadly, the House majority ignored these necessary changes and instead pressed for language that would further tie EPA's hands, while preempting stricter state measures. HR 4591, the TSCA POPs bill by Representative Paul Gillmor, would create a slow, tedious, and costly re-review process. EPA could regulate a POPs only to the extent that it "achieves a reasonable balance of social, environmental, and economic costs and benefits," an unprecedented standard and an open invitation to protracted litigation.

Industry lobbyists delighted at the prospect of winning a U.S. seat in the international POPs review process while ensuring that EPA could never regulate domestically. But they hadn't counted on strong opposition from a coalition of environmentalists, health professionals, tribal leaders, industrial workers, and a bipartisan group of state attorneys general. These public interest voices insisted that POPs legislation should protect public health, not chemical producers. Groups ranging from the United Steelworkers to the American Nurses Association denounced the Gillmor bill in favor of HR 4800, an alternative offered by Representative Hilda Solis. This proposal was defeated in a party line vote.

This political gridlock on POPs leaves the United States sidelined as the world moves ahead on these dangerous global pollutants. But the new Congress will have a fresh chance to consider implementing legislation. By rediscovering the middle ground, lawmakers will enjoy broad public support and help put the country back on the road to international environmental leadership.

Daryl Ditz is Senior Policy Advisor of the Chemicals Program at the Center for International Environmental Law in Washington, D.C.

All Must Move Toward Center For Success

REP. PAUL GILLMOR

The Stockholm (POPs) and Rotterdam (PIC) Conventions and the Aarhus (LRTAP POPs) Protocol are important international agreements that advance the just cause of reducing risks associated with a narrow class of chemicals. The consensus that produced these accords has, until now, been highly effective. Unfortunately, the obvious appeal of eliminating dangerous chemical exposures has run into countervailing forces linked to past policy and current politics. Why? Because POPs implementing legislation opens for amendment an area of federal environmental law that has been closed for three decades: the domestic regulation of industrial chemicals.

Fortunately, there is agreement in the United States that we should fully participate in these pacts. The outstanding legislative issues have been narrowed to just two: who decides if we regulate a new POPs chemical, and how do we domestically regulate that chemical?

My bill, H.R. 4591, suggests a rational solution to both questions.

Why is the "who decides" question difficult? Some, who have concerns about future administrations' policy choices, insist these treaties govern us. Others recog-

nize — rightly, in my view — that not all countries are likely to agree on an action to take concerning a specific chemical, either because the scientific justification is weak, or because the proposed restrictions are more about trade than health protection.

Neither the United States nor any other country should be bound to whatever is included in a future POPs convention, especially since the convention does not require it. Brooks Yeager, President Clinton's lead negotiator for the convention, pushed to explicitly allow each country to decide for itself whether to "opt-in" for future chemical listings. That's why I believe the middle ground on this issue is to allow room for EPA review and discretion following a POPs or LRTAP decision.

As for the "how" question, the structure of domestic regulations to fulfill future treaty obligations is the preeminent issue holding up POPs implementation. Those who oppose quantitative cost-benefit analysis and seek severer restrictions on chemical manufacturing want to overhaul the Toxic Substances Control Act. Industry, however, is resistant to changing this law. The way to reconcile these positions is to reject the use of POPs implementing legislation as a vehicle to address a broader rewrite of TSCA and instead create a POPs-specific process within TSCA that couples rigorous and sound scientific analyses with the elimination of procedural hurdles that many argue have hindered EPA from taking action regarding chemical protection.

People who insist upon structures that erode U.S. sovereignty, overhaul TSCA, or entirely avoid touching TSCA are simply not realistic if they want implementing legislation to pass any Congress. Ultimately, though, it's not enough to identify the "middle ground" if those involved won't agree. Interested parties must cease quibbling and support a solution favored by most stakeholders, thereby allowing us to participate in these treaties and deliver real benefits. My hope is my bill, H.R. 4591, will be the vehicle to bring all parties to the table to reach a rational solution to these questions.

Representative Paul Gillmor (R-Ohio) is Chairman of the House Subcommittee on Environment and Hazardous Materials.

Time To Come In From The Cold

STEPHEN F. HARPER

I recently tried a thought experiment with a group of friends. I described the essence of the POPs, PIC, and LRTAP multi-lateral environmental agreements — tossing in the Basel Convention as well — asking the question, "Should the United States participate or not." My subjects all expressed some variation of, "Of course — what's the problem?" Some of them also urged me to "get a life" and worry about sexier things.

The question of why the United States has not ratified these widely endorsed agreements is one that makes sense only in the dysfunctional context of environmental politics in Washington. Each of these treaties has its own specific politics. However, an uber-dynamic is at play in them all. This dynamic frequently has entailed industry over-reach, environmental NGO perfectionism, and a lack of consistent administration leadership (both Clinton and Bush). Over time, however, industry on the whole has become more supportive of U.S. participation. And the Bush administration has increased its support for ratification. What is missing is for the environmental community to come to the table to support U.S. participation in advancing practical environmental protections, rather than insisting on "perfect" implementing legislation, which often goes beyond the legal requirements of the international accords themselves. NGOs need to look beyond the narrow goal of preventing the Bush administration from claiming an environmental victory.

An example of the challenge can be found with the process governing addition of new chemicals to the POPs and LRTAP agreements. The environmental community would prefer that any listing of a chemical under either translate directly into mandatory regulatory action by EPA. Industry and others fear that these international processes can apply a looser and more political, rather than scientific, threshold for listing and regulating chemicals than would be the case under U.S. law.

What is indisputable is that as long as the United States delays ratification of these agreements, the U.S. government lacks a seat at the table to significantly influence which chemicals get listed and what risk management approaches are adopted for those chemicals. This can lead to potential jeopardy for U.S. companies that depend on those chemicals, whether or not EPA ever regulates them domestically. This jeopardy is greatest for downstream industries with global supply chains and markets.

I believe that the United States should pass legislation similar to that offered by Representative Paul Gillmor. H.R. 4591 would amend TSCA and FIFRA in ways that both recognize the international context and preserve EPA's regulatory process. If that process is flawed, then the broader debate regarding appropriate changes should be joined directly. We should stop letting that broader debate hold up ratification of these important international agreements.

In addition to providing the United States a seat at the table to influence these processes con-

sistent with the national interest, ratification would give EPA new authorities to protect the environment. But ratification requires all inside-the-Beltway parties to step back and view things from the more practical, "What's the problem?" perspective of the ordinary Americans they represent.

Stephen F. Harper is Corporate Director, EHS and Energy Policy, of Intel Corporation in Washington, D.C.

With Accords In Force, A Need For Speed

CLAUDIA A. McMURRAY

For over three decades the United States has been a leader in developing sound and effective risk management regimes in the fields of toxic chemicals and pesticides. The United States was among the first countries to begin addressing the human health and environmental threats posed by pesticides and other toxic substances.

This is why the Bush administration has urged that Congress make it possible to join three important international agreements to address toxic chemicals and pesticides: the Stockholm Convention on Persistent Organic Pollutants, the POPs Protocol to the Convention on Long Range Transboundary Air Pollution, and the Rotterdam Convention on Prior Informed Consent. These three agreements are a cornerstone of international efforts to foster environmentally sound management of chemicals. Joining these accords would confirm our commitment to protection of human health and the environment in this country and around the world, and would allow us to participate fully in the processes by which these agreements will evolve over time.

There is widespread agreement that the accords represent a significant step in the effort to protect the global environment. While the United States no longer uses or manufactures the POPs chemicals, some developing countries continue to use them. Because POPs are capable of long-range transport, no one country acting alone can address their human health and environmental effects.

That is why joining these agreements remains a priority for the Bush administration. All stakeholders should be able to find common ground on these accords, which are pragmatic in their efforts at implementation. The Stockholm Convention, for example, includes a flexible system of financial and technical assistance through which developing countries can receive help to meet their obligations under the treaty. The procedure to govern the addition of chemicals to the convention is science-based, and should a new chemical be added, obligation would enter into force for the United States only if it agrees to be bound — an "opt-in" option to ensure that decisions made by the convention do not prejudge domestic decisionmaking.

The administration has urged that Congress pass pending legislation such as the three bills already introduced in the House and Senate committees to allow the United States to implement the agreements. Each one plays a vital role in ensuring the protection of human health and the environment.

It is critical we move rapidly, because all three accords have been in force for some time. The governing bodies of each of these agreements have met several times, and will convene again soon to make decisions on the future of their respective accords. As a recognized leader in the field of toxic chemicals management, the United States needs to have a seat at the table to shape the future development of each treaty. We look forward to working with Congress to expedite U.S. entry into these important agreements.

Claudia A. McMurray is Assistant Secretary of State for Oceans, Environment, and Science.

Let's Not Undermine FIFRA

DOUGLAS T. NELSON

Ratification of the POP, PIC, and LRTAP treaties is being held hostage by the polarization that now characterizes most congressional action. One could ask where is the middle ground for any legislative initiative beyond appropriations and national security, let alone international treaties.

The debate centers on the robustness of the U.S. regulatory scheme versus the overtly precautionary intent of the treaties. For pesticides, the issue is coordinating treaty requirement with FIFRA and its regulations.

Pesticides are among the most heavily regulated compounds in the United States. FIFRA creates a risk/ benefit approach for registering pesticides for agricultural, home and garden, biocide, and vector control purposes. Manufacturers must subject the proposed molecule to an extensive battery of tests to determine that it does not cause "unreasonable adverse effects" to humans or the environment, and its use is subject to strict controls. EPA has unrestricted cancellation and suspension authority and a due process procedure to insure all stakeholders' opinions are heard

It is this process, refined over 36 years by EPA and before that USDA, that could be impacted by the treaties. New international

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.

Douglas T. Nelson is Executive Vice President and General Counsel of CropLife America in Washington, D.C.

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 Americans, 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,

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.

Representative Hilda L. Solis (D-California) is the Ranking Democrat on the House Energy and Commerce Committee's Subcommittee on Environment and Hazardous Materials and a member of the Energy and Air Quality Subcommittee.

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.

Brooks B. Yeager, as Deputy Assistant Secretary of State for Environment and Development in the Clinton administration, was the lead U.S. negotiator for the Stockholm Convention. At present he is a Visiting Fellow at the H. John Heinz III Center for Science, Economics, and the Environment, in Washington, D.C. The views expressed in his article are his own and not necessarily those of the Heinz Center.