

One More Failed U.S. Environmental Policy

By Kristin S. Schafer

Back in 2001, two global toxics treaties offered a rare opportunity for U.S. leadership in the international environmental policy arena. Today not only is the opportunity for leadership lost, but the United States seems bent on undermining the effectiveness of these important treaties while the rest of the world moves ahead on implementation.

The issues at hand are global elimination of persistent chemicals and control of trade in toxics, and the two international treaties that address these challenges are the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. As of August 2006, at least 127 countries had ratified the Stockholm Convention, and 110 had confirmed the Rotterdam Convention. Both conventions have been in force for more than two years, but the United States has yet to approve either.

Key Points

- The United States has failed to adopt two key treaties: the Stockholm Convention on eliminating chemicals the international community has agreed are extremely dangerous to human health and the environment, and the Rotterdam Convention, which controls the international trade of highly toxic chemicals.
- Washington's inability to adopt these treaties—now ratified by 127 and 110 countries, respectively—constitutes a failure not only of U.S. leadership but of responsible participation in global efforts to protect human health.
- Between 2001 and 2003, the United States exported 28 million pounds of pesticides that are banned domestically.

The chemicals addressed under the Stockholm Convention are persistent organic pollutants (POPs). These toxic substances are transported across the globe, persist in the environment, accumulate in the body fat of humans and animals, and concentrate up the food chain. Even at very low levels of exposure, POPs can cause

reproductive and developmental disorders, damage to the immune and nervous systems, and a range of cancers. Exposure during key phases of fetal development can be particularly damaging, and infants around the world are born with an array of POPs already in their blood. POPs are found in the current U.S. food supply, even though many of the chemicals in question have been banned in the United States for decades.

The global nature of these pollutants led the United Nations Environment Program (UNEP) to sponsor extensive negotiations that culminated in the signing of the Stockholm Convention on POPs in 2001. The treaty entered into force in May 2004 after ratification by 50 countries. The POPs treaty identifies an initial list of twelve pollutants slated for elimination. Nine of these—aldrin, endrin, dieldrin, chlordane, dichloro-diphenyl-trichloroethane (DDT), heptachlor, hexachlorobenzene, mirex, and toxaphene—are pesticides that have been targeted for elimination by non-governmental organizations (NGOs) around the world since the early 1980s. The other chemicals on the convention's initial list are polychlorinated biphenyls (PCBs), dioxins, and furans. Although it banned PCBs and POPs many years ago, the United States continues to produce dioxins and furans as byproducts of chlorine-based industries and waste incineration.

The Stockholm Convention establishes various timetables for the elimination of the listed POP chemicals. Provisions specific to the ever-controversial DDT call for its ultimate elimination but allow interim use of the



pesticide for malaria vector control, if use is accompanied by aggressive efforts to develop and implement safe and effective alternatives. DDT is currently used to control malaria in about two dozen countries, mostly in Africa.

Importantly, the Stockholm treaty also includes a process for identifying and reviewing additional POPs. Five nominated chemicals, including the pesticide lindane and the flame retardant pentabromodiphenyl ether (PBDE), have already passed the first stage of the rigorous, scientific review process on their way to being banned. Another five chemicals are under consideration.

The Rotterdam Convention, which also came into force in 2004, is a complementary treaty providing important controls on international trade of highly toxic chemicals. It requires that any country importing pesticides and certain other hazardous chemicals must be informed of bans or severe restrictions on those substances in other countries. This gives a receiving country the option of refusing shipments of chemicals listed under the treaty on the grounds that they may be harmful to the environment or to the health of its population.

According to the most recent analysis of U.S. customs records conducted by the Foundation for Advancements in Science and Education, more than 1.7 billion pounds of pesticides were exported from U.S. ports between 2001 and 2003. Nearly 28 million pounds of this total were pesticides that have been banned in the United States. Developing countries often lack the capacity to adequately evaluate and regulate highly toxic chemicals imported from their Northern neighbors. The Rotterdam Prior Informed Consent treaty (PIC) is the international community's response to this inequity. Although the convention could be strengthened—some analysts believe that the current rules for adding chemicals to the “PIC list” are designed to limit the number of new substances that can be added—it represents an important tool to help the international community monitor and control the world's massive trade in dangerous substances.

Problems with Current U.S. Policy

Just prior to Earth Day 2001, President Bush announced that he intended to sign the Stockholm POPs treaty and move quickly toward ratification. He pointed out the bipartisan nature of the commitment, promising to conclude a process overseen by his Democratic predecessor. Many U.S. NGOs welcomed the Bush administration's commitment to the treaty, and they hoped that the State Department and Senate would follow through with ratification of the Stockholm Convention and its companion, the Rotterdam Convention, before the end of 2001.

Key Problems

- The Bush administration's refusal to establish a workable domestic system for eliminating chemicals added under the Stockholm Convention has delayed ratification and represents a clear violation of the spirit of the treaty.
- Congress is implementing legislation for the treaty to weaken domestic toxics laws and undermine states' rights.
- U.S. policies do not adequately reflect the precautionary principle, a more effective approach to chemical policies prevalent in Europe and integral to these two global agreements.

More than five years later, U.S. ratification is still elusive. Before the Senate can provide the necessary advice and consent, Congress must make modest amendments to fix loopholes in two key federal statutes. A controversial version of the required implementing legislation currently being considered by the House (the Gillmor POPs bill) would virtually ensure that the United States never regulates any POPs added to the Stockholm Convention. It also threatens states' rights to protect their citizens from POPs by preempting stricter state rules. This bill has drawn fire from the United Steelworkers, American Nurses Association, attorneys general in eleven states, and dozens of environmental health advocacy groups. The House is likely to consider the proposed legislation, which modifies the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act, in early September.

The United States has a history of slow ratification of international agreements, many of which have been known to languish for years in the Senate, the State Department, or somewhere in the policy netherworld. In the case of the Stockholm Convention, the delay is inexcusable. The treaty has widespread support from the NGO community, the chemical industry, and governments around the world, and it regulates a set of chemicals that have been known for decades to be extremely dangerous.

The primary barrier to ratification has been a reluctance to establish a reasonable domestic system for taking action when new chemicals are added under the treaty. The treaty is designed so that every participating country can opt in or opt out of taking action on newly added chemicals. Once the United States has decided to opt in, a domestic process must be in place to meet the treaty commitments. The current version of legislation delinks the Environmental Protection Agency's (EPA) decision-making from the international scientific process, even after the United States has decided to opt in for action on a new chemical. This is a serious barrier to streamlined action and a clear violation of the spirit of the convention.

Some of the chemicals likely to be considered for addition, such as the pesticide endosulfan, are still in widespread use in both industrialized and developing nations, despite clear evidence of toxicity, persistence in the environment, and bioaccumulation. Elimination of these additional chemicals is certain to be more controversial in the United States than agreement on the initial pesticides targeted under the treaty, which have already been banned domestically for decades. In a White House Rose Garden statement announcing his intent to sign and ratify the POPs treaty, President Bush noted that POP chemicals "respect no boundaries and can harm Americans even when released abroad." This statement, while true, does not reflect the other side of the equation—that continued use and release in the United States of persistent chemicals not included on UNEP's

initial list under the convention can and do harm citizens in other countries around the world.

The science-based process of adding new chemicals under the Stockholm Convention should be governed by precaution, a concept that appears in several places in the treaty's text and is strongly supported by health and environmental advocates worldwide. The precautionary principle recognizes that when there is evidence that a chemical threatens "serious or irreversible damage," action should be taken even in the absence of full scientific certainty. This principle recognizes the tremendous complexity of scientific research on the environmental and health impacts of synthetic chemicals, and it directs the international community to take protective action based on available knowledge to avoid irreparable harm.

Most European countries are well ahead of the United States in embracing the precautionary principle in both domestic and international policies. In negotiating the Stockholm Convention, the United States strenuously opposed precautionary language, while Europe strongly promoted it. This proved, along with the topic of financing, to be one of the most contentious issues in the final hours of treaty negotiations.

During negotiation of the Rotterdam Convention, the United States clearly recognized the potential impact of the more precautionary and protective policies in Europe. Under the voluntary PIC procedure, a pesticide qualified for the PIC list if it had been banned or severely restricted in any single country. The alternative proposal, supported by the United States and eventually incorporated into the final Rotterdam Convention, stipulates that a pesticide must be banned in at least two countries belonging to two separate global regions to trigger the PIC procedure. The boundaries used for the treaty include the United States and Canada as one region and the 43 countries of Europe as another. The U.S. position on this issue stemmed from concerns that bans in Europe, based on more precautionary policies, would lead to a larger "PIC list," potentially undermining markets for U.S. pesticide manufacturers.

Yet despite U.S. reluctance, the international community is moving toward precautionary approaches that will provide real protection for both human health and the environment. The Rotterdam Convention is itself an example of a fundamentally precautionary instrument that allows governments to choose to avoid harm by not allowing imports of chemicals that have been deemed too dangerous in other countries.

Toward a New Foreign Policy

Congress must pass implementing legislation for the two conventions that ensures appropriate transparency and public notification, protects states' rights, effectively meets treaty obligations, and, in the case of the Stockholm Convention, allows a streamlined process for adding new chemicals based on decisions taken by the countries that have ratified the convention—the Conference of Parties. Under the convention, an international Scientific Review Committee has been established to recommend bans on additional chemicals. The Conference of Parties will consider these recommendations and come to agreement on any list expansion. To fulfill its treaty obligations, the United States must have a domestic program in place to rapidly implement decisions made under the treaty.

Draft legislation meeting these criteria exists in the House (the Solis POPs bill), but it was voted down along party lines in committee in July 2006. Congress must roundly reject the controversial Gillmor bill moving forward that does not meet these criteria. Although environmental health groups around the United States are eager to see the conventions ratified, they would rather wait for proper implementing legislation than accept ratification that undermines the POPs treaty and weakens U.S. participation in its implementation.

Because the United States has not yet ratified the conventions, it is participating in official meetings as an observer. Yet this does not mean the United States cannot take steps to demonstrate a commitment to treaty implementation and advance toward meeting treaty

objectives. The United States should immediately initiate the development of a national implementation plan, including a focus on the byproduct POPs (dioxins and furans) and an evaluation of persistent chemicals not yet listed under the Stockholm Convention.

Key Recommendations

- Congress should pass strong implementing legislation that does not weaken the Stockholm and Rotterdam conventions.
- Washington should empower progressive state actions rather than seeking to undermine them.
- The United States should phase out production and use of additional persistent chemicals that qualify as POPs under the Stockholm Convention.

In developing a national plan, federal officials should examine progressive policies at the state level. Several states such as Maine, Washington, and California are addressing the ongoing use of persistent pollutants. For example, a February 2006 executive order by the governor of Maine established a task force to identify and promote safer alternatives to persistent bioaccumulative toxins, neurotoxins, and other chemicals discovered through biological monitoring. The state of Washington is implementing a plan under its Department of Ecology to phase out releases of persistent pollutants like mercury and dioxins. And in 2002, California phased out the pharmaceutical uses of lindane, a persistent pesticide finally banned from agricultural applications by the EPA in 2006 after a 29-year review process. Lindane has already been outlawed in at least 52 countries and was nominated in 2005 for inclusion under the Stockholm Convention. Progress currently underway through state-level initiatives like these can help the United States move toward national evaluation, reduction, and eventual elimination of persistent pollutants that threaten human health.

The NGO community continues to track ratification of the Stockholm and Rotterdam treaties with great interest, but the cautious optimism of five years ago is long gone. In his 2001 speech linked to Earth Day, President

Bush announced his support for the Stockholm Convention, reminding the country that “the risks are great, and the need for action is clear.” These words now have a hollow ring, as the United States is once again left far behind in the international environmental policy arena, and U.S. public health remains at risk.

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For More Information

FPF Citizen-Based Global Affairs Agenda: Ratifying Treaties Controlling Toxic Chemicals
<http://www.irc-online.org/fpif/cgaa/toxics.html>

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The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
<http://www.pic.int/>

Stockholm Convention on Persistent Organic Pollutants
<http://www.pops.int>

US POPs Watch
<http://www.uspopswatch.org>

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