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The Stockholm Convention On Persistent Organic Pollutants

Paul E. Hagen and Michael P. Walls

The latest in a series of global multilateral environmental agreements—the Stockholm Convention on Persistent Organic Pollutants—entered into force on May 17, 2004. Conference of Plenipotentiaries on the Stockholm Convention, U.N. Doc. UNEP/POPS/CONF/2 (May 22, 2001) (Convention). The Convention is an important milestone in international law and has particular relevance for the U.S. role in advancing international environmental protections, the evolution of U.S. law and practice, and the business community.

As of early November 2004, 151 governments have signed the Convention, and 83 have ratified it. For many, U.S. implementation of the Convention is a necessary predicate to maintaining the U.S. government's historical leadership role in addressing persistent organic pollutants (POPs). U.S. ratification would also enhance the credibility of the United States in international environmental matters, given that the United States has failed to implement several other global environmental accords in recent years. This article reviews the negotiations leading up to the Stockholm Convention, outlines the basic obligations of the treaty, and discusses the environmental and economic benefits that would arise from U.S. implementation of the agreement.

POPs are a small set of chemicals that remain intact in the environment for long periods, become widely distributed geographically, accumulate in the fatty tissue of living organisms, and are toxic to humans and wildlife. This group of chemicals includes some well-known pesticides, industrial chemicals, and by-products.

These chemical characteristics are considered to be among the most important determinants of the potential human health and environmental risks associated with environmental releases, or potential releases, of

chemicals. As a result, they have been used frequently in risk-, hazard-, and exposure-based prioritization systems for chemicals, and became the basis for multilateral controls on POPs substances.

Due to their long-range transport, POPs substances have been detected in remote regions of the globe. For example, POPs have been detected in Arctic wildlife, for example, in habitats where POPs substances have never been used. Some studies indicate that POPs exposures can contribute diseases, abnormalities, and eventual decline of wildlife species. Human effects that may be linked with POPs exposures—primarily through the food supply—include developmental and neurologic responses.

The U.S. government was one of the early leaders in controlling POPs releases. Of the substances controlled under the Stockholm Convention (DDT, for example) none have been intentionally produced domestically for some time, and all are heavily regulated by the U.S. Environmental Protection Agency (EPA) under various environmental statutes. The first U.S. regulatory action on DDT came in 1969, and EPA canceled all registered pesticide uses of DDT by 1972. EPA regulation of two by-products addressed by the Stockholm Convention, dioxins and furans, will result in a 90 percent reduction in dioxin and furan emissions from 1987 levels.

Beginning in the 1990s, the U.S. government and the broader international community took a series of concurrent domestic and international actions to address POPs that culminated in the adoption of new domestic and international legal regimes. In 1998, EPA outlined an agencywide, multimedia strategy for priority persistent, bioaccumulative, and toxic (PBT) substances, of which POPs are an important subgroup. EPA, A Multimedia Strategy for Priority Persistent, Bioaccumulative and Toxic (PBT) Pollutants (Nov. 16, 1998). The strategy served as an umbrella for EPA's POP-related activities, including modifications to the Toxics Release Inventory (TRI) and a policy announcement on new chemical notices for substances with PBT characteristics. Since the EPA PBT Strategy was developed, EPA has also worked with regional offices (e.g., Region 5 in the implementation of the Bi-National Toxics Strategy with Canada) and

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the North American Council on Environmental Cooperation (NACEC) to address POPs. The NACEC process, for example, has resulted in several Regional Action Plans (RAPs), which set out a regional approach to reducing POPs releases. Some state governments have taken action on POPs and PBTs, most recently in the State of Washington. See State of Washington, Department of Ecology, PBT Rule Development Advisory Committee, Review Draft (Dec. 8, 2004).

International work toward a multilateral agreement on POPs had its genesis in the early 1990s, as several organizations began work on land-based sources of marine pollution. The early efforts resulted in several regional agreements, such as the Protocol Concerning Pollution from Land-based Sources and Activities to the Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean. POPs were also the subject of extensive discussion in fora such as the Intergovernmental Forum on Chemical Safety.

Under the auspices of the United Nations Economic Commission for Europe (UNECE), the United States, Canada, and governments in Europe concluded the POPs Protocol to the Long-Range Transboundary Air Pollution (LRTAP) Convention in 1998. The protocol entered into force in October 2003. U.N. Economic Commission for Europe, Protocol on Persistent Organic Pollutants, ECE/EB.AIR/60 (June 24, 1998). The protocol obligates parties to take measures to eliminate the production and use of certain POPs listed in Annex I, restrict the use of substances listed in Annex II, and reduce emissions of substances (by-products) listed in Annex III. The protocol targets sixteen substances and includes criteria and procedures for parties to identify and restrict additional POPs over time. The LRTAP POPs Protocol served as an important regional precedent and model for the global Stockholm Convention. The LRTAP POPs Protocol will be a testing ground for proposals to add new POPs chemicals, and action on several candidate chemicals is expected in the near future.

Following several years of study, the U.N. Environment Programme's Governing Council issued a mandate in 1997 for the negotiation of a global, legally binding instrument to reduce and where feasible, eliminate, releases of POPs. Negotiations on the

treaty began in January 1998, were conducted over six sessions, and were concluded in December 2000. The treaty was opened for signature in May 2001 in Stockholm, Sweden.

The Stockholm Convention

The Stockholm Convention seeks to protect human health and the environment from the risks posed by POPs. The Convention reflects the international community's support for a risk-based approach to reducing or eliminating the potential impacts of listed POP chemicals. The POPs treaty is focused on controlling the production, use, and/or emissions of twelve POPs of "historical concern." Of the twelve substances, ten are no longer produced in the United States, and as noted, all have been the subject of con-

siderable regulation. The two Stockholm POPs that are produced, dioxins and furans, are unwanted emissions by-products. Releases of these pollutants have been reduced considerably in the United States. It has been a policy aim of the U.S. government to encourage other governments around the world to also take action to restrict the production, use, and emission of these substances that warrant action at the global level.

The Convention obligates governments to take measures to eliminate the production and use of nine chemicals listed in Annex A. Parties are also obligated to restrict the production and use of chemicals listed in Annex B, but only DDT is currently listed, as its production and use for vector control is permitted under the Convention. A number of exemptions are recog-

nized in the agreement, including exemptions for declared "country-specific" production or use of a substance, research and development, and POPs occurring as unintentional trace contaminants in products. Parties may notify the treaty secretariat that it intends to exempt closed-system, site-limited intermediates, which by the nature of their processing and use are not expected to result in human or environmental exposures. Parties are to periodically review and adjust these exemptions. Governments also pledge to apply best available technology and best environmental practices to control emissions of the by-product POPs.

Parties agreed to prohibit or restrict the import and export of listed POP chemicals. Requirements are also set forth in the Convention for the management of POP stockpiles and for the environmentally sound

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collection, transport, and disposal of wastes containing POPs. With regard to waste management, the Convention directs the parties to cooperate with the appropriate bodies of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. In October 2004, parties to the Basel Convention adopted new technical guidelines for the management of wastes containing POPs. Seventh Meeting of the Conference of the Parties to the Basel Convention, Decision VII/13, U.N. Doc. UNEP/CHW.7/33 (Oct. 29, 2004).

The Convention also contemplates additions to the list of targeted POPs. The process for the review of and decisions on nominated chemicals and what to do to manage their risks is grounded in science. The treaty establishes a criteria-based process for the nomination of new chemicals as POPs, and requires a risk evaluation and socioeconomic analyses to support the nomination and consideration of listings.

Any party may nominate a substance for listing under the Convention by submitting a proposal containing information on the chemical and its characteristics (e.g., persistence, bioaccumulation, toxicity and potential for long-range environmental transport) to the secretariat. Upon satisfactory review, the secretariat is to refer the nomination to the Persistent Organic Pollutants Review Committee (POPRC) for further review against the screening criteria set forth in the Convention. If the POPRC determines that further action is warranted, it will prepare a draft risk profile for review and comment by the parties. If, based on the risk profile, the POPRC decides that the chemical is likely as a result of its long-range environmental transport to lead to significant adverse human health and/or environmental effects, POPRC will prepare a risk management evaluation that includes an analysis of possible control measures for the nominated chemical. POPRC will then decide, based on the risk profile and the risk management plan, whether to recommend to the Conference of the Parties (COP) that the chemical be listed under the Convention.

The decision to add an additional chemical to the Convention is in effect an amendment to the agreement and must be made by the COP. For most parties, the listing of a new POP by the COP will become effective in one year, except for those parties that have made a timely objection to the amendment. In addition, parties have the option at the time they rati-

fy the Convention to declare that they will not be bound by any future amendments to Annex A, B or C absent an affirmative ratification of the amendment. The United States is expected to avail itself of this opt-in approach to any future amendments to the Convention that would list additional substances for elimination or control. At the time of this writing, eight parties, including Canada, have availed themselves of the opt-in approach.

While most developed countries are well positioned to implement the Convention's obligations, many developing countries could find full implementation a challenge due to resource constraints. The Convention recognizes the Global Environment Facility (GEF) as the principal entity entrusted with the operation of the Convention's financial mechanism. The GEF provides capacity-building assistance to developing countries and now includes POPs among its key focal areas.

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U.S. Implementation

The United States has signed but not yet ratified the Stockholm Convention. Two congressional actions are necessary to bring the Convention into effect. First, the Senate must provide its advice and consent with respect to the treaty. Second, both houses of Congress must pass legislation to implement the operative provisions of the treaty. U.S. implementation of the Stockholm Convention will require amendments to the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to ensure EPA has the authorities needed to fully enforce

U.S. obligations under the Convention. Finally, the President must deposit the U.S. instrument of ratification with the U.N. depositary.

In April 2001, President Bush announced his support for the Stockholm Convention and indicated his intent to submit the treaty to the Senate for advice and consent. The President's announcement was greeted with widespread support from industry and the environmental community, as both groups supported the negotiation and conclusion of the agreement. The President also proposed legislation to implement the Stockholm Convention in early 2002, but although it was introduced in the Senate the proposal was not acted on.

The President has submitted the Stockholm Convention for Senate advice and consent, and although a hearing has been held on the treaty, the Senate Foreign Relations Committee has yet to report

out the agreement for full Senate action. It is likely that the committee is waiting for further progress on necessary implementing legislation before making a formal recommendation on ratification to the full Senate. To date, there has been no fundamental opposition to the Stockholm Convention in the Senate.

In July 2004, the Senate Environment and Public Works Committee approved a bill that would amend TSCA to implement the treaty (S. 1486), but full Senate action has not been scheduled pending action on the necessary FIFRA amendments by the Senate Agriculture Committee. S. 1486 has drawn criticism from both environmental groups and industry. In the view of many environmental groups, the legislation does not go far enough to commit the United States to act when a new POP is controlled under the Convention.

In the view of industry representatives, provisions authorizing citizen petitions to force the U.S. government to adopt COP decisions on new POPs, and a judicial review provision that requires *de novo* court review of agency decisions are problematic. These provisions remove the essential role EPA must play in ensuring that the United States act on only those chemicals added to the Convention that qualify as POPs warranting action at the global level. Industry has also objected to an ambiguous and untenable standard for domestic regulatory action included in the Senate bill.

Interestingly, only narrow amendments to TSCA and FIFRA are required to allow the United States to participate as a full party to the Stockholm Convention—explicit authority for EPA to ban or restrict the current twelve POPs, and controls on exports and imports of the substances. Nothing in the Stockholm Convention compels Congress to establish a statutory program to consider chemicals added to the Convention by subsequent decision of the parties. Industry, environmental groups, and the Bush administration have expressed a preference for implementing legislation that addresses new POPs, generally in the interest of legislative economy. Thus, Congress could approve legislation that did not address the domestic regulation of new POPs, and assuming all other authority was in place, the United States could readily join the international community as a full party to the Stockholm Convention.

In the House of Representatives, the Subcommittee on Environment and Hazardous Waste held a hearing on the Stockholm Convention and has prepared draft legislation to amend TSCA. Stalled by the congested congressional schedule prior to the November 2004

elections, it is not clear when the subcommittee will return to the issue. The House Agriculture Committee has also not acted on a FIFRA amendment.

The Case for U.S. Participation

Without immediate congressional action in 2004 it is unlikely that the United States will be a full party to the Convention in time for the scheduled first meeting of the parties in May 2005. At the first meeting, significant decisions on procedure will be made that will affect the future implementation of the agreement. As the U.S. government has provided important leadership in negotiating the Convention and on POP issues generally, a U.S. presence is needed to ensure that the early decisions on implementation conform to the letter and spirit of the agreement.

For example, throughout the negotiations, the United States led the effort to ensure that the Convention was grounded in science and established a risk-based approach to identifying and acting on chemicals of global concern. U.S. participation in the Convention is key to ensuring that parties adhere to the process and criteria set forth in the Convention for identifying and managing additional POP chemicals. Moreover, as governments begin the process of nominating additional chemicals for phaseout or restriction, it will be important for those U.S. industries that rely on chemical use and innovation (e.g., chemicals, plastics, semiconductor, agriculture) to ensure that U.S. interests are well represented.

United States participation is also critical to ensure that the Convention can deliver tangible environmental benefits over time. Recent history has shown that where the United States actively participates in global environmental accords (e.g., the Montreal Protocol), U.S. leadership, technical expertise, and resources can help ensure that global environmental risks are identified and mitigated. Conversely, the absence of U.S. participation in such accords increases the likelihood that such agreements will drift politically or suffer from uneven or ineffective implementation.

For these reasons, it will be important for the administration, Congress, and key stakeholders to take the steps necessary to enact required implementing legislation for the Stockholm Convention in the near term. Failure to do so could limit the long-term health and environmental benefits that might otherwise arise from the Convention. A delay in U.S. ratification will also unnecessarily increase the economic risks to U.S. business interests, and further strain the relationships between the United States and other governments on international environmental matters.

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