

**TESTIMONY OF JAMES R. ROEWER  
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**LEGISLATIVE HEARING BEFORE THE HOUSE SUBCOMMITTEE ON  
ENVIRONMENT & HAZARDOUS MATERIALS ON "POPs, PIC, and LRTAP: THE  
ROLE OF THE U.S. AND DRAFT LEGISLATION TO IMPLEMENT THESE  
INTERNATIONAL CONVENTIONS"**

**July 13, 2004**

Good afternoon. My name is James R. Roewer. I am the Executive Director of the Utility Solid Waste Activities Group (or "USWAG") and I am pleased to present this statement on behalf of the Edison Electric Institute ("EEI") and USWAG regarding the important issue of the development of draft legislation to implement the United States' obligations as a party to the Stockholm POPs Convention, LRTAP POPs Protocol, and Rotterdam PIC Convention (which I refer to collectively as the "Stockholm" or "POPs" Convention).

EEI is an association of U.S. shareholder-owned electric companies, international affiliates, and industry associates worldwide. EEI's U.S. members serve roughly 90 percent of the ultimate customers in the shareholder-owned segment of the industry, nearly 70 percent of all electric utility ultimate customers in the nation, and generate nearly 70 percent of the electricity produced in the United States.

USWAG is a consortium of EEI, the American Public Power Association ("APPA"), the National Rural Electric Cooperative Association ("NRECA"), the American Gas Association ("AGA"), and approximately 80 electric utility operating companies

located throughout the country. APPA is the national association of publicly-owned electric utilities. NRECA is the national association of rural electric cooperatives, many of which are small businesses. AGA is the national association of natural gas utilities. Together, USWAG members represent more than 85 percent of the total electric generating capacity of the United States and service more than 95 percent of the nation's consumers of electricity and over 93% of the nation's consumers of natural gas.

The utility industry has a substantial interest in the development of the POPs implementing legislation because, among other reasons, polychlorinated biphenyls or PCBs are one of the twelve POPs identified in the Convention. As this Subcommittee is aware, PCBs are singled out for comprehensive regulation under section 6(e) of the Toxic Substances Control Act ("TSCA") and are authorized for limited use in specified equipment, such as transformers and capacitors, in accordance with exacting requirements ensuring that their use will not pose an unreasonable risk of injury to health or the environment. The United States' PCB regulatory program, which has been in place for over a quarter of a century, is among the most comprehensive and effective in the world and is the product of considerable regulatory scrutiny and development. I feel confident in saying that our PCB program is the standard against which the PCB programs of other countries are measured.

With that being said, let me commend the Subcommittee for holding this hearing. EEI and USWAG recognize and support the leading role that the United States has played in helping to forge the Stockholm Convention, and we share the view of others in this room that it is extremely important for the United States to continue to play a leading role regarding the implementation and future strategic decisions involving the

Convention. For that to happen, it is essential for the United States to both ratify the Convention and enact implementing legislation.

At the same time, we must be careful that the final implementing legislation incorporates the proper statutory framework under which the United States can assess and meet its Convention obligations. As we all know, Treaties are commitments between nations to take certain actions and do not, in and of themselves, directly regulate individuals within those nations. Therefore, we believe a key goal to keep in mind during this process is ensuring that the legislation not supercede U.S. law already regulating POP chemicals or cede to one of the many international committees established under the Convention direct decision-making authority regarding the domestic regulation of POP chemicals. Rather, the purpose of the implementing legislation should be to allow Congress to exercise *its* authority to establish how the United States, *through our existing domestic laws*, will meet the international obligations of the United States as a Party to the Convention. This will ensure that decisions regarding how the United States implements its Convention obligations remain with the sovereign jurisdiction of the United States and are determined by the Congress and the Executive Branch.

With these objectives in mind, we are concerned that the POPs legislation pending in the Senate – S. 1486 – could be construed as replacing U.S. law with the text of the POPs Convention and result in the decisions of international bodies with respect to the regulation of POP chemicals being directly binding on U.S. entities. We do not think this would be in keeping with the structure or purpose of the Convention or the intent of the United States in becoming a party to the Convention.

It is for that reason that we believe that the Committee's Discussion Draft of June 17, 2004, establishes the appropriate statutory framework for implementing the United States' Convention obligations. In fact, we respectfully suggest that the model for developing implementing legislation for the POP chemicals should involve nothing more than a relatively straightforward two-step process. The first step involves identifying the United States' commitments under the Convention and then determining whether existing U.S. laws applicable to POPs chemicals allow for the United States to meet those commitments. To the extent that there are any "gaps" in existing U.S. laws, the implementing legislation should fill those gaps through targeted and focused amendments to TSCA and/or FIFRA. This approach would enable the United States to fulfill its Convention obligations with respect to the twelve POPs currently subject to the Convention while, at the same time, preserving the sovereign role of the United States in enacting domestic laws applicable to its citizens. We also believe this is the appropriate framework to use in evaluating whether and how to regulate new POP chemicals added to the Convention in the future.

This "framework" should not come as a surprise to anyone, as it is fully consistent with the messages of both President Bush in his letter transmitting the POPs Convention to the Senate for ratification, and of Secretary of State Powell in his letter transmitting the Convention to the President. *See Message from the President of the United States Transmitting Stockholm Convention on Persistent Organic Pollutants, With Annexes, Done at Stockholm, May 22-23, 2001, Treaty Doc. 107-5, 107<sup>th</sup> Congress, 2d Session (Attached).* In fact, the President's transmittal letter observes that the Convention obligates parties to the Convention to take "significant steps, *similar*

to those already taken by the United States,” to address POPs. *Id.* at III (emphasis added). Implicit in the President’s message is the fact that the United States is one of the world’s leaders in regulating POP chemicals and that a key fundamental purpose of the Convention is for other participating countries to “upgrade” their POP regulations to the level already achieved by the United States.

The Secretary of State’s transmittal letter also observes that the Convention will commit *other* countries to take actions similar to those *already taken* by the United States to eliminate or restrict the production, use and release of POP chemicals. *Id.* at V. Of particular relevance to this hearing, however, is the Secretary’s comprehensive section-by-section analysis of the obligations set forth in the Convention and how existing U.S. laws regulating POP chemicals match up to those obligations. *Id.* at VI-XXII. I respectfully suggest that the Secretary’s analysis is a road map for how the United States should develop implementing legislation to meet its Convention obligations with respect to the 12 POP chemicals, including PCBs.

Given that the United States already is one of the world’s leaders in this area, it is not remarkable that the Secretary concludes that “the United States *could implement nearly all Convention obligations under existing [U.S.] authorities*” with the exception of certain gaps that can be addressed by targeted legislative amendments to TSCA and FIFRA. *Id.* at XXII (emphasis added). Of special relevance to USWAG and EEI is the Secretary’s findings with respect to the Convention’s obligations regarding PCBs, where he concludes that “[t]he United States has already taken strict measures to regulate PCBs” and that “[e]xisting statutory authority allows the United States to implement each of these obligations [applicable to PCBs], nearly all of which are currently

addressed under existing PCB regulations.” *Id.* at XX. The only exception where the Secretary notes that additional regulation with respect to PCB may be necessary concerns meeting the Convention’s prohibition on PCB exports.

Thus, neither the President nor the Secretary of State contemplated whole changes to the existing laws regulating POP chemicals in this country. Rather, they envisioned a deliberate and thoughtful analysis regarding whether existing U.S. laws allow the United States to meet its Convention obligations and, to the extent that such laws are deficient in any particular area, implementing legislation consisting of targeted amendments to fill such gaps.

Again, in our view, this is the approach reflected in the House Discussion Draft of June 17, 2004, and is reflected in the Draft’s treatment of PCBs. For those subject areas where the drafters identified statutory gaps in existing law that did not provide EPA with adequate statutory authority to fulfill a Convention commitment with respect to PCBs – such as authority under TSCA to prohibit PCB exports – the Draft legislation specifically fills that gap. See Section 3 of the Discussion Draft amending TSCA Section 6(e) to prohibit PCB exports except for environmentally sound disposal (pp. 40-41 of Draft). The Draft also fills a perceived statutory gap with respect to PCBs by amending TSCA to require PCB variances to conform to the variance provisions in the Convention. *Id.*

With respect to all other aspects of the U.S. PCB regulatory program, the Draft appropriately assumes, consistent with Secretary of State’s findings, that there are no other identifiable shortfalls between what the POPs Convention contemplates with respect to PCBs and what already is provided for under existing U.S. law. The Draft,

therefore, appropriately directs that, *for purposes of complying with the POPs Convention*, EPA may only issue or amend rules applicable to PCBs *if* the Administrator of EPA concludes, through notice and comment rulemaking and with the concurrence of the Secretary of State, that such additional rules or amendments are necessary to comply with the Convention. This approach leaves open the means for EPA to shore up such gaps if and when any are identified, while preserving the integrity and stability of existing U.S. law. This is an eminently reasonable and thoughtful framework for implementing the United States' Convention obligations.

As a final note on this subject, I would like to point out that, contrary to certain reports in the trade press, the House Draft does not in *any* way preclude EPA from imposing additional regulatory controls on PCBs under TSCA section 6(e) or any other applicable federal law for any reasons unrelated to the POPs Convention. The conditions set forth in the House Draft for issuing or amending rules applicable to PCBs are applicable *only* in the context of EPA taking action for purposes of complying with the POPs Convention. This is a narrow and discrete provision and in no way alters EPA's existing authority under TSCA section 6(e) to regulate PCBs.

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I would like to thank the Subcommittee for the opportunity to present the views of EEI and USWAG on draft legislation for implementing the Stockholm Convention. I would be glad to answer any questions you have concerning my testimony.