CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

March 31, 2006

Hon. Paul E. Gillmor
Chairman
Subcommittee on Environment and Hazardous Materials
2125 Rayburn House Office Building
Washington, DC 20515-6115

Re: March 2, 2006 Hearing on Legislation to Implement the POPs, PIC, and LRTAP POPs Agreements: Answers to questions from Members of the Subcommittee

Dear Chairman Gillmor:

Thank you for your request for responses to your questions stemming from my testimony at the March 2 Subcommittee hearing entitled, "Legislation to Implement the POPs, PIC, and LRTAP POPs Agreements." All of my responses below are provided within the context of the Stockholm Convention on Persistent Organic Pollutants (POPs). For ease of presentation, I have reproduced your questions in their entirety, and inserted my answers directly after each question or sub-question.

Sincerely,

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1. You have stated in your testimony that you believe the "reasonable balance" standard required by H.R. 4591 would be a substantially weaker standard compared with the standard employed by the international body and H.R. 4800. I would like to understand the source of this concern, particularly since this standard does not go into effect until the United States opts-in to a specific chemical, implicitly declaring that the POPS Treaty standard is the reason *why* the U.S. wants to regulate the chemical.
   A. Do you agree that all the domestic notice and comment periods required in H.R. 4591 that occur throughout the international community's deliberations do not include or ask for a cost-benefit analysis to be conducted?

      ANSWER: Yes.

   B. Do you agree that the "reasonable balance" test only occurs when the U.S. is undertaking a rulemaking?

      ANSWER: Yes. However, EPA's perception of the workability of that test may affect whether or not it ever initiates a rulemaking. Please see my response to (G) below.

   C. Do you agree that in H.R. 4591, any domestic regulations resulting from the rulemaking can only be put into force when the U.S. consents to be bound by the treaty for the new chemical?

      ANSWER: Yes.

   D. Do agree [sic] that information used by the U.S. to make the consent decision is based on the data that was requested and received during the notice and comment periods that I described before, which does not include the "reasonable balance" test?

      ANSWER: No. By "consent decision," I understand you to mean a decision of the United States to deposit its instrument of ratification or acceptance for a new-listing amendment and thus to be legally bound by that amendment. Such a decision will be made by the President under her or his foreign affairs/treaty making powers. Under the separation of powers doctrine, it would not be appropriate for Congress to try to *require* the President to make that decision on the basis of information obtained through the notice and comment periods in H.R. 4591; as I understand H.R. 4591, the bill does not try to establish such a requirement. The President may or may not base the U.S. "consent decision" upon some or all of the data requested and received during the notice and comment periods, but the extent to which she or he will base the decision upon that information is not dictated by any part of H.R. 4591. Because none of

H.R. 4591's provisions can directly establish requirements for the President's "consent decision," I cannot agree with a statement "that information used by the U.S. to make the consent decision is based on the data that was requested and received during the notice and comment periods."

E. Do you agree that when the U.S. consents to be bound by the international community's decision on a new chemical, that the consent decision is based on the environmental and health-based standard?

ANSWER: As I imply in my answer to (D) above, I do not presume to know what the President's consent decision will be based upon. I do not believe it is spelled out by any part of H.R. 4591.

F. Do you agree that there is a distinction between whether or not to take an action and how to take an action?

ANSWER: Yes. However, your line of questioning here suggests that it may be helpful to clarify precisely *what* action is being contemplated. There are two distinct, primary actions. One is the EPA Administrator's decision whether or not to initiate a rulemaking in respect to a POP that has been added to the Stockholm Convention. The other action is a decision by the President whether or not the United States should "opt in" to a new-listing amendment to the Convention and thus be bound by that amendment. The statutory authority contemplated under H.R. 4591 goes to the first action (EPA rulemaking), but not to the second (President's opt-in decision).

Although these two actions are distinct, *how* H.R. 4591 instructs EPA to take its action can have a direct bearing on *whether* the President may bind the United States to a treaty amendment for a newly listed POP. That is because Congress can effectively prevent the President from exercising her or his treaty making powers by failing to give EPA adequate authority to ban or restrict the newly listed POP. The President should not bind the United States to a new listing amendment until our domestic implementing regulations for the amendment are in place, because to do otherwise, the President would put U.S. compliance with the treaty amendment at risk, thereby calling into question the President's ability to "take care that the laws be faithfully executed." (U.S. Const. art. II, § 3). Thus, while there is certainly a distinction between whether or not to take these actions and how to take them, how they may be taken can have a direct correlation with whether they can be taken.

G. So, do you agree that the "reasonable balance" standard is only used when determining *how* to implement the treaty, which becomes effective only after the U.S. consents to be bound in the first place?

ANSWER: No. As I suggest above, and as I have stated in my testimony, the "reasonable balance" standard, coupled with H.R. 4591's standard of review, could make it difficult or impossible for EPA to implement a new POPs listing decision, and thus could jeopardize the ability of the United States to join the rest of the world in accepting decisions to add dangerous POPs chemicals to the Stockholm Convention. Because H.R. 4591 could make it exceedingly difficult or impossible for EPA to successfully promulgate a rule that would be strong enough to permit the United States to comply with a new-listing amendment, we anticipate that H.R. 4591 would have—and indeed, may be intended to have—the effect of prohibiting the President from opting in to future Stockholm amendments.

2. Am I correct to say that one of your objections to H.R. 4591 is the use of a cost-benefit analysis in the rule-making procedure?

ANSWER: Yes.

Do you believe that when the international community conducts a cost-benefit analysis, it is able to adequately account for all U.S. costs and all U.S. benefits and include them in their evaluation?

ANSWER: I assume your intent is not to ask this as a general or hypothetical question, but rather to ask it within the context of the Stockholm Convention's Article 8 procedures for evaluating and adding other POPs to the treaty. If my assumption is correct, the premise of the question is nonsensical, because the Stockholm Convention's listing procedures for additional POPs do not include any reference to cost-benefit analysis.

More generally, in the context of environmental health regulation, cost-benefit analyses do not adequately account for all costs and benefits. Thus, they are inherently flawed and inappropriate as a rule of decision.

Isn't standard practice in any U.S. decision-making process to conduct a cost-benefit analysis unless specifically prohibited by law?

ANSWER: I am not aware of such a sweeping "standard practice" for U.S. decision-making.

How does this reliance on the international community to ensure American interests are preserved maintain the sovereignty of U.S. decision-making?

ANSWER: The sovereignty of U.S. decision-making is fully maintained by the existence in the Stockholm Convention of Article 25.4, which provides that a new-listing amendment "shall enter into force [for the United States] only upon the deposit of its instrument of ratification, acceptance, approval or accession." This "opt-in" right ensures that the United States can never be bound by a Stockholm Convention new-listing decision against its will. However, if the United States concludes that the results of the international listing process—in which it will have actively participated—serve American interests, then the United States should be able to promptly and effectively adopt and implement the new listing amendment. If it were to become law, H.R. 4591 would likely prevent that from happening.

Given our nation's problems with our "allies" that manifest themselves in the "Oil-for-Food" scandal, is it not in the interest of the U.S. to conduct its own evaluation in the event that the international community does not include all U.S. costs and benefits of regulation?

ANSWER: While the Stockholm Convention is administered as part of the United Nations system, it is a fully autonomous and distinct legal entity that is answerable exclusively to the will of its states party. Thus, I do not understand what relevance the "Oil-for-Food" scandal may have to an evaluation of this treaty and whether its processes, rights, and obligations may serve U.S. interests. I suggest it would be more appropriate to look to the performance of other multilateral environmental agreements, which, to the best of my knowledge, have functioned free of scandal. Alternatively, one may find enlightenment by examining whether there is any relationship between U.S. interests, this legislative process, and the vote-selling and influence-peddling scandals that have recently roiled the Congress. There is no reason to tar all international processes with the problems of the Oil-for-Food program, just as there is no reason to tar all U.S. lawmakers with the problems of Jack Abramoff and former Congressman Cunningham.

3. Where in H.R. 4591 is the specific language that prohibits the United States from meeting the minimum control measures in the POPS Treaty?

ANSWER: I am not aware of any provision within H.R. 4591 that contains "specific language that prohibits the United States from meeting the minimum

control measures in the POPS [sic] Treaty." Similarly, I am not aware (as I believe your question implies) of any instance in which anyone has alleged that H.R. 4591 contains "specific language that prohibits the United States from meeting the minimum control measures in the POPS [sic] Treaty." Rather, the point I have made repeatedly in my testimony, and which I reiterate in these answers, is that the "reasonable balance" standard, coupled with H.R. 4591's standard of review, could make it exceedingly difficult or impossible for EPA to successfully promulgate a rule that would be strong enough to permit the United States to comply with a new-listing amendment.

4. I think we both support elimination of the "dirty dozen" and a process for addressing additional chemicals in the future – a concern raised by several environmental NGOs in the 107th Congress. Certainly, though, nothing approaching our desire to see additional extremely dangerous chemicals addressed would be accomplished if the United States were to remain in "observer status" – the same status that your group currently enjoys at the meetings of the full POPs parties. Since you consider having a seat at the table a lesser goal, does that conversely mean that you also believe that your government should have no more say in the POPs Convention than your group?

   ANSWER: Your question is predicated on your assertion that I "consider having a seat at the table a lesser goal." I do not believe I have ever made such a statement; in fact, I have repeatedly said in public that it is very important for the United States to participate actively and constructively in the Stockholm Convention as one of the states party.

5. H.R. 4800 takes the main criteria for considering a chemical by the POPs Conference of the Parties and makes it our domestic regulatory standard for these chemicals. H.R. 4800, however, also allows the use of other domestic environmental laws for compliance with the POPs Convention. This sets up a potential confrontation between existing environmental law and the mandate in the Solis legislation to use one of the Treaty's listing criteria. If we seek full compliance with the treaty, when US law and the treaty are in conflict, which should prevail: domestic law or the treaty?

   ANSWER: Because this question is very difficult to understand, I will parse the sentences:

   > "H.R. 4800 . . . allows the use of other domestic environmental laws for compliance with the POPs Convention. This sets up a potential confrontation between existing environmental law and the mandate in the Solis legislation to use one of the Treaty's listing criteria."

The purpose of H.R. 4800 § 502(h) is to provide EPA with the statutory authority to regulate in a timely manner POPs substances that have been added to the Stockholm Convention, so that the United States can reliably opt-in to a new-listing amendment if it chooses to do so. However, H.R. 4800 accurately recognizes that "industrial chemicals"—which typically fall within the scope of TSCA—may not be the only kind of POPs that are added to the treaty. For example, a POP may be unintentionally caused by combustion with a release to the air, it may be related to releases from stockpiles and wastes, or it may be a pesticide.

H.R. 4800 instructs the Administrator to initiate a rulemaking under § 502(h) *unless* the Administrator determines that (1) the chemical is not likely to lead to significant adverse human health or environmental effects, (2) the chemical is already regulated in the United States in a manner that would allow us to comply with the Stockholm amendment in question, or (3) a rule is being promulgated under another section of the U.S. Code (e.g., FIFRA, RCRA, CERCLA, the Clean Air Act, etc.) that similarly would allow us to comply with the Stockholm amendment. This latter exception makes simple, common sense, because it allows the United States to regulate the POP under whatever statutory authority represents the most expedient, efficient, and effective way to do so.

It is not apparent to me why you would say that H.R. 4800's choice-of-law provision "sets up a potential confrontation between existing environmental law and the mandate in the Solis legislation to use one of the Treaty's listing criteria." Perhaps you are trying to suggest that H.R. 4800—rather than serving as U.S. implementing legislation for a non-self executing treaty—is somehow trying to force EPA to regulate directly from the text of some disembodied international agreement. However, such a suggestion would misconstrue the purpose of U.S. implementing legislation for a treaty; confuse the relationship between U.S. statutes, regulations, and treaties to which we are party; and require a misreading of H.R. 4800.

Nowhere in H.R. 4800 does there appear a mandate to EPA "to use one of the Treaty's listing criteria." As I explained above, the mandate is to regulate a POP in a manner that will allow the United States to comply with a new-listing amendment, unless EPA determines that the chemical is not likely to lead to significant adverse human health or environmental effects.

> "If we seek full compliance with the treaty, when US law and the treaty are in conflict, which should prevail: domestic law or the treaty?"

This sentence establishes a false dichotomy between "US law" and "the treaty." As you know, the "Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land . . ." (U.S. Const. art. VI, cl. 2). That is why, for those treaties such as the Stockholm Convention that are not self-executing, it is essential that the United States have in place adequate legal authority to ensure that we can comply with the treaty before we ratify it. It is also the reason why I have emphasized that if the Congress enacts implementing legislation that makes it difficult or impossible for EPA to promulgate rules that allow the United States to comply with a Stockholm Convention new-listing amendment, then the President will not be able to opt in to such an amendment, because to do so would jeopardize her or his ability to ensure that the laws are faithfully executed. Our concern is not that H.R. 4591 would establish a conflict between U.S. legal obligations. Rather, it is that, in some or even most cases, the only way the United States could avoid such a conflict were H.R. 4591 enacted would be to refrain from adopting Stockholm Convention amendments that regulate additional POPs.

I would like to make an additional observation regarding the regulatory standard in H.R. 4800. You have attacked that standard because it is derived from the text of the Stockholm Convention, and apparently because that fact somehow suggests to you that it is perhaps un-scientific or even an affront to U.S. sovereignty. However, in the Message from President Bush to the Senate transmitting the Stockholm Convention, the following statement appears as part of the Letter of Submittal from then-Secretary of States Colin Powell:

> [Under Article 8 of the Convention, the Persistent Organic Pollutants Review Committee] must still determine 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." *This formulation is consistent with risk-based decision-making by chemical regulators under existing U.S. law* (emphasis added).
> S. Treaty Doc. No. 107-5, at xiv (2002).

This formulation is, of course, the same one from which is derived the H.R. 4800 standard to protect "against significant adverse human health and environmental effects." I do not understand why a formulation that the Secretary of State and the President said "is consistent with risk-based decision-making by chemical regulators under existing U.S. law" would be acceptable when the Stockholm Convention was presented to the U.S. Senate for its advice and consent, but would not be acceptable for

inclusion in the implementing legislation intended to implement the Convention.

6. Your testimony from both the July 13, 2004 hearing before our panel and the one on March 2, 2006 make clear that you do not support the creation of a domestic regulatory standard that departs from the treaty review processes. However, I noticed that the website for your group, the Center for International Environmental Law, contains a July 16, 1999 Technical Statement by United States Environmental Organizations – 14 in total including CIEL – that raised concerns about U.S. involvement in the World Trade Organization when it stated:

   "*We are pleased to learn that the Administration now seems to agree that ad hoc dispute settlement decisions alone are not a solution to the impact that WTO rules as currently interpreted may have on measures to protect the environment. United States leadership…is needed to ensure that WTO forums — including the Dispute Settlement Body — and WTO rules consistently defer to regulations and other measures adopted by international and national institutions."*

   How do you square your organization's position with the need for the protection of distinct and separate domestic processes from international frameworks with your support for the selective, treaty-dependent regime in H.R. 4800?

   ANSWER: First, I do not agree that my testimonies "make clear that [I] do not support the creation of a domestic regulatory standard that departs from the treaty review processes." The more accurate characterization of my views is that I do not support creation of a domestic regulatory process that would make it more difficult or impossible for the United States ever to opt in to Stockholm Convention amendments for additional POPs.

   As to your question, it seems to be based on the faulty syllogism that if my organization supports U.S. ratification and full implementation of the Stockholm Convention, we must necessarily support U.S. subservience to all multilateral agreements and institutions. CIEL is dedicated to using international law and institutions to protect the environment, promote human health, and ensure a just and sustainable society. We support U.S. ratification and full implementation of the Stockholm Convention because we think the treaty is a good agreement that lives up to both America's and CIEL's ideals, and because we are convinced it will serve U.S. interests by helping to protect the health and well being of Americans and people throughout the world, especially our children, grandchildren, and unborn generations.

   We do not share the same enthusiasm for some aspects of the World Trade Organization and its underlying agreements, because we believe that in some ways they do not contribute to achievement of a just and sustainable society, nor do they serve the interests of most Americans. We have been consistent

in this respect for many years by supporting active, constructive involvement by the United States in sound multilateral agreements; opposing U.S. obstruction to such agreements when it has occurred; and trying to convince the United States Government to use its considerable influence to demand reforms and improvements in those agreements and institutions, such as the WTO, that we believe have serious flaws.

7. You state that, with the exception of DDT, all Annex A chemicals should be banned but posit that a risk-based standard would jeopardize the ability to ban these chemicals. I have two (2) questions: first, H.R. 4591 does not apply a risk-based standard to the existing 12. Actually, doesn't H.R. 4591 ban all 11 of the "dirty dozen" that are already part of Annex A as well as place a restrictive, domestic legal construct on PCBs?

   ANSWER: To the best of my knowledge, I have never stated that DDT is an Annex A chemical. DDT is an Annex B chemical, meaning that it is not targeted for elimination under the Stockholm Convention, but instead is subject to restriction.

   H.R. 4591, like H.R. 4800, bans outright all of the intentionally produced POPs that are presently listed in the Stockholm Convention, with the exception of PCBs, which are subject to a more extended phase-out. Accordingly, neither bill delegates rulemaking authority to EPA for the purpose of banning the existing 12.

   Second, you acknowledge that a chemical, like DDT, should not be banned. Doesn't this mean that you contradict your very interest in requiring all chemicals be banned as per CIEL's statement on its web page that chemicals should be guilty until proven innocent?

   ANSWER: I am unaware of any organization, let alone CIEL, that has "an interest in requiring all chemicals be banned." The position would be preposterous on its face if it were made by anyone. I assume that the intent behind that phrase was to say that CIEL has "an interest in requiring all *POPs* be banned."

   As we have stated previously, we do believe all anthropogenic chemicals that exhibit characteristics of persistence, toxicity, and the ability to bioaccumulate and travel long distances should be phased out and eliminated from the global environment. However, we recognize that some chemicals with those qualities (DDT being the prominent example) may serve important public health purposes, and that eliminating the use of such chemicals before affordable, effective alternatives are widely available could cause serious problems, especially in developing countries. That is why we support restriction of DDT to disease

vector control in accordance with the terms of Annex B, and why we support dramatically increased public and private funding to combat malaria and to develop and make available affordable, effective alternatives to DDT as soon as feasible.

As to the putative statement on CIEL's website "that chemicals should be guilty until proven innocent," I would appreciate your telling me precisely where on our website that statement can be found, because I would like to correct it immediately if it is there. However, I assume that you have, in fact, misquoted us, and you were actually referring to one of our frequent criticisms of TSCA § 6 and the traditional U.S. approach to regulating chemicals, which we say fail in part because they are based on an outmoded assumption that all chemicals are innocent unless they are proven guilty.

8. You state that criteria not considered by the POP COP should be reinserted as part of a domestic regulatory process designed to implement and satisfy our obligations to this treaty. Since the POP-RoC is not charged with worrying about any of our nation's interests, does that mean you support not having the United States assess its own implementation in terms of impacts on U.S. jobs, U.S. standard of living, or national defense concerns?

ANSWER: I am not familiar with any institution called the "POP COP." I assume you mean the Persistent Organic Pollutants Review Committee, or POPRC.

If some members of this Subcommittee and the Congress ever decide to drop their insistence on using this implementing legislation to score ideological points, and if they thereby allow the United States to proceed with ratification, I predict the United States will immediately have significant influence on the POPRC and will soon be a member of it. The nature of the Stockholm Article 8 procedures—which reflect the design characteristics insisted upon the U.S. Government during the treaty's negotiation—are such that they provide significant opportunities for the United States to present information relevant to our economic, security, and other domestic needs, and to insist that such information be used to shape the ultimate outcome of the POPRC's recommendation for the chemical in question. To suggest, as I understand your question implicitly does, that the other members of the POPRC will decide to ignore or even deny serious interests and needs of the United States during the listing process presupposes, in my view, that the process has significantly broken down. Moreover, it presupposes that no other countries will share any of the same interests and needs in respect to a persistent organic pollutant, or that members of the global community will spite themselves in order to spite the United States. In any event, if one of these scenarios came to pass, then the United States would have the ready safeguard of Article 22.4,

which ensures that the amendment shall not enter into force for the United States unless and until we agree to be bound by it.

Also, if the POP COP [sic] dismisses certain "scientific" findings as unsubstantiated or unsupportable, do you believe that the United States should be compelled to consider or accept them as part of a rulemaking record?

ANSWER: We do not believe that this legislation should place restrictions on EPA as to what scientific information it may or may not consider during the rulemaking process. Rather, EPA should have the discretion to be guided by its own expertise, subject to the requirements of Executive Order 12866, in determining what scientific resources it will consult and the weight it will give to them. H.R. 4800 recognizes the value of giving EPA this discretion. In contrast, H.R. 4591 contains language that tries to second guess EPA's ability to weigh the value of scientific information. This "sound science" language would provide producers and users of POPs chemicals—or anyone else who wants to delay instituting a covered regulation protecting human health and the environment—with an additional opportunity to sue EPA, or to create a "chilling effect" that will lessen EPA's inclination to initiate a POPs-related rulemaking.

9. For the generation of a risk profile, Annex E states "The purpose of the review is to evaluate whether the chemical is likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects, such that global action is warranted." Do you agree that this is the standard in H.R. 4800?

ANSWER: No. The standard in H.R. 4800, found in § 502(h)(1)(B)(i) reads as follows:

> [The Administrator shall publish a final rule] to prohibit or restrict the domestic manufacture, processing, distribution in commerce for export, use, or disposal of the additional chemical substance or mixture, that protects against significant adverse human health and environmental effects from such domestic manufacture, processing, distribution in commerce for export, use, or disposal associated with the chemical substance or mixture (including, as the Administrator considers appropriate, effects from long-range environmental transport), which at a minimum implements the control measures specified for the chemical substance or mixture in Annex A and B of the POPs Convention and Annex I and II to the LRTAP POPs Protocol

The "significant adverse human health and environmental effects" part of the H.R. 4800 standard is derived from Stockholm Article 8.7(a), which is similar to the language you quote from Annex E.

Is it correct to say that based on the information requirements listed in only Annex E, no additional chemical would be placed in Annex B?

ANSWER: No. Annex E lists information requirements for the risk profile required by Art. 8.6. Thus it pertains to the POPRC decision of whether a chemical should be considered a POP. Annex E does not go to control measures, which are to be proposed in response to the risk management evaluation required under Art. 8.7. It is through the risk management evaluation and determination of control measures that a chemical could ultimately be placed in Annex A, B, or C.

Isn't it true that the cost-benefit analysis conducted in Annex F reveals the cost to human health in addition to the benefits in banning a chemical like DDT?

ANSWER: No. Annex F contains nothing about cost-benefit analysis. Instead, it provides an indicative list of factors that the POPRC should consider in preparing the risk management evaluation. There are no provisions for cost-benefit analysis anywhere in the Stockholm Convention.

If there were a chemical proposed for listing that had beneficial uses like DDT, and using only the standard as outlined in Annex E and H.R. 4800, isn't it true that if a chemical causes significant adverse human health and/or environmental effects, it would be placed in Annex A regardless of the life-saving uses it may have?

ANSWER: No. As I have explained above, focusing solely on Annex E does not reveal anything about what the control measures for a POP will be. Annex E is used to inform development of the risk profile, which in turn is used to determine whether the chemical in question is a POP and warrants global action. What that global action will be (i.e., what the control measures will be) is determined through development of the risk management evaluation and through the decision-making processes of the Conference of the Parties. That is why the rulemaking mandate of H.R. 4800 quoted above contains language related to the determination of whether a chemical is a POP that causes significant adverse human health and environmental effects, as well as language related to control measures.

If any considerations other than the significant adverse human health and/or environmental effects are included, doesn't that mean that this standard was not meant to be the regulatory standard, but the threshold by which the international community is compelled to act, not how they act?

ANSWER: Please refer to my answer above, which responds to this question. However, I would like to add that your question seems to indicate confusion about precisely what one means by "regulatory standard." Generally speaking, the operative section of a U.S. environmental health law will contain a standard by which EPA should or must make a determination to act, and then instructions for what EPA should or must do after such a determination is made. For example, TSCA § 6(a) contains the standard of "unreasonable risk of injury to health or the environment," which is followed by the various "least burdensome means" responses EPA may apply (the Corrosion Proof Fittings court's interpretation of how EPA may apply these "least burdensome means" responses is widely viewed as the reason why § 6(a) is dysfunctional). An example from the U.S. Code that is more analogous to POPs implementing legislation is § 602 of the Clean Air Act, which implements the Montreal Protocol on Ozone Depleting Substances, a multilateral environmental agreement like the Stockholm Convention. Section 602 contains the standards "causes or contributes significantly to harmful effects on the stratospheric ozone layer" and "cause or contribute to harmful effects on the stratospheric ozone layer." After finding that one of these standards is met, the Administrator must add the chemical in question to one of the lists of ozone-depleting substances. The chemical is then subject to the timed phase-out required by Congress in either § 604 or § 605.

Like these and other U.S. environmental health laws, H.R. 4800 contains a standard for action (production, use, distribution, etc. of the chemical is likely to lead to significant adverse human health and environmental effects) and instructions from Congress for the required action (implement the control measures specified for the chemical in Annex A, B, or C of the Stockholm Convention).