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December 17, 2004

Hon. Richard G. Lugar
Chairman, U.S. Senate Committee on Foreign Relations
306 Hart Senate Office Building
Washington, D.C. 20510-1401

Hon. Joseph R. Biden Jr.
Ranking Minority Member, U.S. Senate Committee on Foreign Relations
201 Russell Senate Office Building
Washington, D.C. 20510

**Re: Treaty Doc. 109-7: Protocol of 1997 amending MARPOL 73/78
Annex VI: Regulations for the Prevention of Air Pollution from Ships**

Dear Senators Lugar and Biden:

On behalf of the Association of the Bar of the City of New York, Committee on International Environmental Law, I am writing to urge the U.S. Senate to promptly consider and ratify the 1997 Protocol ("Annex VI") relating to the treaty known as the International Convention on the Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol Relating Thereto (MARPOL 73/78). As you are aware, President Bush submitted Annex VI, Regulations for the Prevention of Air Pollution from Ships, to the Senate for its advice and consent on May 16, 2003. Adopted in 1997 by the International Maritime Organization and signed by the United States on December 22, 1998, Annex VI would establish certain limits on air emissions from large ocean-going vessels. Annex VI contains consensus standards for world shipping, and will take effect on May 19, 2005.

MARPOL 73/78 has six annexes that address different kinds of pollution from ships: oil, noxious liquids carried in bulk, harmful substances in packaged form, sewage, garbage, and air emissions. The U.S. government has ratified all but the annexes relating to sewage and air emissions. Pollutants emitted by ships comprise a significant portion of total air pollutant emissions in harbor cities such as New York City. The Port of New

York and New Jersey is the nation's third busiest harbor by tonnage, handling some 134.5 million tons of cargo in 2002. New York City and portions of New Jersey currently do not comply with federal Clean Air Act air quality standards for ground-level ozone and particulate matter. A recent inventory of emissions in the New York Harbor area found that more than 12,000 tons of NO_x and many other contaminants are released by commercial marine vessels each year, equivalent to such emissions from 303,000 onroad vehicles, with the largest amount coming from oceangoing vessels carrying international cargo.¹ The sulfur dioxide emissions from commercial vessels in the New York-New Jersey harbor area is equivalent to emissions from approximately 5.3 million onroad vehicles, due to the high sulfur content in marine diesel fuel.² The U.S. Environmental Protection Agency (USEPA) has recently noted that marine diesel emissions

lead to adverse health and welfare effects associated with ozone, PM [particulate matter], NO_x [oxides of nitrogen], and volatile organic compounds, including toxic compounds. In addition, diesel exhaust is of special concern because it is likely carcinogenic for humans as well as posing a hazard from noncancer respiratory effects. Ozone, NO_x, and PM also cause significant public welfare harm such as damage to crops, eutrophication [which harms water supply reservoirs], regional haze, and soiling of building materials.

69 Federal Register 39280 (June 29, 2004). Moreover, the problem will likely grow worse with the projected doubling in shipping traffic at U.S. ports over the next decade. Fortunately, substantial technological progress has been made in recent years in controlling diesel exhaust emissions through the use of robust, high-efficiency catalytic devices placed in the exhaust system. *Id.* at 39284.

USEPA's 1999 rule for commercial marine diesel engines set two tiers of emission limits for the control of NO_x for smaller Category 1 and 2 marine diesel engines (less than 30 liters per cylinder). In April 2002, USEPA proposed, and in January 2003 adopted, Tier 1 standards also for Category 3 marine diesel engines (at or above 30 liters per cylinder). The USEPA Tier 1 standards for all three categories are identical to the MARPOL Annex VI standards. The USEPA Tier 1 standards for Category 1, 2 and 3 engines are enforceable for engines manufactured on or after January 1, 2004 and installed on vessels flagged or registered in the U.S. Engines meeting the Tier 1 standards have emissions about 20 percent lower than uncontrolled levels. The USEPA Tier 2 standards for Category 1 and 2 engines are stricter than MARPOL Annex VI standards for Category 3 engines, and will take effect in 2007. USEPA has committed to promulgating Tier 2 standards for Category 3 engines by April 27, 2007 that also would

¹ The New York, Northern New Jersey, Long Island Nonattainment Area Commercial Marine Vessel Emissions Inventory (prepared for the Port Authority of New York and New Jersey, USACE, New York District, Starcrest Consulting Group, LLC, April 2003), Tables 4.1, 4.5 and 4.6.

² V. Patton, J. Scott, N. Spencer, "Smog Alert: How Commercial Shipping is Polluting Our Air", Environmental Defense (2004), at 27, available online at www.environmentaldefense.org.

be stricter than the Annex VI standards.³ However, the USEPA limits for all three categories would not apply to foreign-flag vessels engaged in international shipping, even though they may be in U.S. waters.⁴ Such vessels constitute the majority of vessels engaged in international trade at U.S. ports.

Annex VI, which was negotiated with full participation by the United States, would supplement USEPA's efforts by establishing an international framework to reduce air pollution from ships, and thus help achieve U.S. air quality goals. It would reduce the emission of nitrogen oxides (NOx) from large new or reconstructed marine diesel engines up to 30 percent from 1990 levels, and provide a vehicle for further internationally agreed NOx reductions through a rapid amendment procedure. In addition, it would establish a global cap of 4.5 percent on the sulfur oxides (SOx) content of marine fuels, and provide a mechanism for reducing the sulfur content to 1.5 percent in areas where SOx reductions would be beneficial. Annex VI would also prohibit the deliberate emission from ships of ozone-depleting substances including halons and chlorofluorocarbons, regulate the emission of volatile organic compounds between tankers and terminals, prohibit the incineration on board of certain products, such as contaminated packaging materials and polychlorinated biphenyls (PCBs), set standards for fuel oil quality, and establish certain requirements for platforms and drilling rigs at sea.

As President Bush noted in his transmission message to the Senate, the Senate's ratification of Annex VI would strengthen the hand of the U.S. delegation in working within the international treaty framework to amend Annex VI to achieve further reductions in NOx emissions that are easily achievable with current technology. The U.S. government has already asked the International Maritime Organization, the United Nations body under whose auspices Annex VI was negotiated, to review the Annex VI NOx standards, with the intent of making them more stringent, and therefore closer to USEPA Tier 2 standards. This review commenced in July 2003, and certain progress in this regard was made during the IMO's recent Marine Environment Protection Committee meeting, held from October 11-15, 2004. The Annex VI cap of 4.5% sulfur content in marine diesel fuel is lenient considering the world average sulfur content for such fuel is about 2.7%, according to USEPA. (By comparison, this is nearly 2000 times the 15 parts per million sulfur standard required by USEPA for marine diesel fuel in the U.S. by 2012.) Nevertheless the Annex VI fast-track procedure for establishing a stricter limit of 1.5% sulfur content in designated areas holds some promise for areas frequented by foreign shipping, such as along the coasts of North America, a step we hope the Administration will pursue. Two designated "SOx Emission Control Areas" (SECA), the Baltic Sea Area and the North Sea, will be subject to the stricter controls when Annex VI takes effect in May 2005.

³ 68 Fed. Reg. 9746 (February 28, 2003), to be finalized by April 27, 2007.

⁴ Despite its authority to regulate foreign ships in U.S. waters, USEPA has chosen to exempt foreign-flag vessels from the ambit of its marine diesel regulations.

Annex VI's emissions standards for marine diesel engines apply to any diesel engine constructed on or after January 1, 2000, and to any engine that undergoes major conversion after that date. Therefore the full benefit of Annex VI will take a number of years to be realized, given the numbers of pre-2000 ships in active use and the typical useful lives of such vessels.

Annex VI represents a useful step in the international effort to address international mobile source air pollution that affects U.S. air quality, notably in port cities such as New York City. Our Committee members join me in urging your Committee and the Senate as a whole to ratify Annex VI to MARPOL 73/78 at the earliest opportunity. Thank you for the opportunity to comment.

Sincerely,



Christopher J. McKenzie, Chair

- cc: Sen. Hillary Rodham Clinton
Sen. Charles Schumer
Sen. John Corzine
Sen. Frank Lautenburg
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