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Subject: Restriction of PFHxA and PFASs in firefighting foams

Dear Sir or Madam,

Thank you for your letter dated 16 May 2022¹ regarding the proposal by Germany for a restriction of undecafluorohexanoic acid (PFHxA) its salts and related substances (C6) and a proposal prepared by ECHA at the request of the European Commission for a restriction of per and polyfluoroalkyl substances (PFASs) in firefighting foams.

The letter raises a concern as to the length of time elapsed between the adoption of SEAC's opinion on the PFHxA proposal in December 2021 and the submission of the RAC and SEAC to the Commission. The combined opinions of RAC and SEAC were submitted to the Commission on 10 May 2022. A technical problem with the ECHA website prevented the publication of the combined RAC and SEAC opinion until 16 May 2022 and we apologise that you were not aware that the opinions had been sent when you wrote to us.

The proposed restriction of PFHxA its salts and related substances was one of the most technically challenging evaluations that RAC and SEAC have undertaken, which resulted in lengthy opinions supported by several technical annexes. Quality assuring such documents to ensure clarity and to identify any inadvertent errors and inconsistencies requires meticulous review but is necessary to minimise the likelihood of misunderstandings and delays at the decision-making stage. We strive to undertake these checks more quickly than was achieved in this case. However, on this occasion, it took longer than normal because key staff were also working on the proposal for a restriction of PFASs in firefighting foams. We hope to submit opinions to the Commission on restriction proposals more quickly in the future.

We note that the RAC and SEAC opinions identified several significant concerns related to the assessment underpinning the proposed restriction of PFHxA and made recommendations to modify certain conditions and transitional periods, including for the parts of the proposed restriction relating to firefighting foams. These recommendations are important to consider when comparing the conditions of the proposed restriction on PFHxA and the conditions of the proposed restriction on PFASs in firefighting foams.

With respect to the proposal restriction of PFASs in firefighting foams, we can confirm that the intention of this proposal is not to weaken any existing legislation on PFASs in firefighting foams. Where necessary we will ensure that text in the Background Document is clarified. Where there

¹ ECHA received this letter on 3 June 2022

are legally binding restrictions under REACH or the POPs regulation our baseline assumes that these will continue to apply. Our understanding is that this is also the approach followed by the UPFAS Member States in the Annex XV report. However, whilst the evaluation of the PFHxA proposal provided useful insight and input to the assessment performed for the preparation of the proposed restriction of PFASs in firefighting foams it is not appropriate, at this time, to assume that the PFHxA proposal will become part of the legislative baseline. On this basis ECHA's proposed restriction also covers PFHxA in firefighting foams as well as any other PFASs that could be used to avoid a restriction on PFHxA. Regrettable substitution of PFASs in firefighting foams has been observed on multiple occasions since the banning of PFOS and there is evidence that PFASs beyond C6 are already being used in firefighting foams. The proposal to restrict all PFASs in firefighting foams is therefore the only way to ensure that PFASs are not used in firefighting foams, which would also be in line with the objectives of the CSS. We acknowledge that the Commission will have an important role to integrate all of the various restrictions on PFAS to avoid double regulation and ensure maximum clarity to stakeholders.

However, irrespective of whether the Commission and Member States pursue the PFHxA or PFASs proposal for firefighting foams, the phase out timeline (in real terms) under both proposals would be expected to be similar, as can be seen from the summary table in the appendix to this letter. This table is based on the table developed by EEB but corrects several misunderstandings of the PFHxA proposal and applies similar assumptions on the entry into force for the two restrictions. In many instances the ECHA proposal would result in significant shorter phase out timelines. It is also important to note that the ECHA proposal contains two important provisions that the PFHxA proposal does not. The first is a requirement after six months to only use PFAS containing foams on class B fires (PFAS foams are also used on other types of fires). The second is a requirement for users benefiting from a transition period to develop and update annually a 'PFAS foam management plan' and implement measure to minimise releases in the event of use, which will ensure that PFAS containing foams are only used for as long as necessary within transitional periods and should they be used releases would be kept to a minimum. The proposal of ECHA to define the uses with the longest transitional periods on class B fires at SEVESO sites, rather than on large tanks, is based on an assessment that this is a more fit-for-purpose approach recognising that industrial applications where PFAS containing foams are challenging to substitute currently extend beyond large tank scenarios and include sites where multiple types of flammable liquids are used (as recognised by SEAC in their recommendation in their opinion on the PFHxA proposal to review the proposed five year transitional periods for class B fires prior to its entry into force). We will ensure that the justification for this choice is elaborated further in the Background Document for the proposal.

Finally, as well as providing the solution to the problem of PFASs in firefighting foams, the ECHA restriction proposal is the first to use a group-based hazard and risk assessment for the entire PFAS class. This is an important milestone towards achieving the objectives of the EU chemicals policy and is already providing important learnings for the Member States as they finalise their Annex XV report for submission in January 2023. As such, the use of ECHA's resources is well justified.

Yours faithfully,

(e-signed)²

Peter VAN DER ZANDT
Director of Risk Management

Cc:

² As this is an electronic document, it is not physically signed. This communication has been approved according to ECHA's internal decision approval process.

Helsinki, 27 June 2022

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Appendix

Comparison table of restriction conditions and transitional periods proposed in the PFHxA and PFASs restriction.

	PFHxA and related substance (DE proposal as modified by RAC/SEAC)		PFASs in firefighting foams (ECHA proposal)	
Entry into force	Assumed 2023 (1 year from opinions sent to COM – Q2 2022)		Assumed 2024 (1 year from opinions sent to COM – Q2 2023)	
Manufacture of substance	EiF+3y	2026	NA	-
Formulation of firefighting foams	EiF+5y	2028	EiF+10y ³	2034
Mandatory foam management plans⁴	-	-	EiF+6months	2024
Uses (class B fires only; 3 years PFHxA and 6 months for PFASs in firefighting foams)				
Training	EiF+5y (emissions must be minimised)	2028	EiF+1.5y	2026
Testing				
Municipal (class B)	EiF+5y ¹	2028	EiF+1.5y	2026
Civilian ships (class B)			EiF+3y	2027
Portable extinguishers (class B)			EiF+5y	2029
Seveso establishments (class B)	NA		EiF+10y	2034
Large tanks ²	EiF+12y	2035	NA	
Others (incl. defence)	EiF+5y	2028	EiF+5y	2029

1 – Based on paragraph 5(c) of proposed SEAC conditions in opinion; TP of EiF+3 y for non-class B applications. SEAC recommended that this TP is reviewed before entry into effect

2 - PFHxA targeted large tanks. ECHA's proposal instead targets Seveso establishments, which includes most, if not all, installations with these large tanks plus others where transition to alternatives is likely to require extended time. The TP for Seveso could therefore be compared to this large tanks exemption in the PFHxA proposal;

3 - This is to ensure that PFAS containing foams are available throughout the transitional period. Fire safety is the paramount concern here.

4 – pre-condition for continued use of PFAS-containing foams during TPs; revised annually