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Natacha Cingotti, Health and Environmental Alliance (HEAL)
Annelies De Boer, Tegengif – Erase all Toxins.

Subject: Restrictions of PFHxA and PFAS in firefighting foams

Dear Sir or Madam,

Thank you for your letter dated 16 August 2022 in which you request clarifications to several points contained in our letter to you dated 27 June 2022. We would like to thank you for raising these points, which we will consider carefully as we make updates to the proposal through the remainder of the opinion-making process (the restriction Background Document). We are also pleased to provide some further input regarding these points. For convenience we have done so in an Annex to this letter.

As always, and for maximum transparency, the Agency looks forward to receiving any further comments that your respective organisations would like to make in the consultation on the Annex XV report, which is open until 23 September.

Yours faithfully,

(e-signed)¹

Peter van der Zandt
Director of Risk Management

¹ As this is an electronic document, it is not physically signed. This communication has been approved according to ECHA's internal decision approval process.

Annex

1.1. Overall approach to these overlapping restrictions

Several of your points (1.1 and 1.2) relate to the choice of regulatory baseline against which our restriction proposal was assessed. As an objective scientific organisation it is not ECHA's role to prejudge decision-making on proposed restrictions, even where RAC and SEAC's opinions are adopted. Further, in this case, as highlighted in our previous letter, RAC and SEAC identified significant issues with the analysis justifying the proposed restriction during their opinion making. We do not know how the Commission and Member States will reconcile these issues during the decision making.

In terms of point 1.2.2 we make no assertion that the PFHxA restriction will not be adopted. We simply highlight that irrespective of which proposal is eventually adopted the phase-out timeline for PFASs in firefighting foams in many use contexts would be expected to be similar.

In terms of point 1.3, we are aware that legislation elsewhere has already been adopted for PFASs; in fact we note this in the Annex XV report as lending support for the proposed restrictions. The sector-specific transitional periods proposed are intended as final (non-extendable) phase-out dates for PFASs in firefighting foams across all relevant sectors in the EU and were derived based on the available information on the performance of alternatives and the socio-economic impacts of implementing a restriction at the time of preparation. The consultation on the Annex XV report includes a specific question on the appropriateness of the proposed lengths of sector-specific transitional periods and RAC, SEAC and the Dossier Submitter will carefully review any information submitted on this point when developing their opinions and deciding on revisions to the proposal, respectively.

1.2. Technical elements

In terms of points 2.1 and 2.2, relating to the evidence that PFASs beyond C6 (i.e. beyond PFHxA related substances) are already being used in firefighting foams is reported in Wood's report² (see Task 1.3).

In terms of the points raised in 2.3, in relation to the justification for a derogation based on Seveso sites, we acknowledge that the sections of the Background Document reporting the rationale for the scope of derogation can be improved. The justification will be elaborated in the revised Background Document prepared in response to the comments submitted in the consultation on the Annex XV report.

In relation to your point regarding continued use of PFAS containing firefighting foams in tanks with a surface area of <400 m² under the ECHA proposal. This would indeed be possible under the proposed conditions of the restriction for class-B fires only during an applicable sector-specific transitional period (i.e. for a maximum of 10 years at Seveso sites) but only if the operator of the site was able to justify in their PFAS foam management plan that the available alternatives could not be implemented. PFAS foam management plans are required to be updated annually and are enforceable.

Uncertainties regarding the appropriateness of the proposed 5-year transitional period for class B fires (paragraph 5(c) of the proposed restriction) were raised by SEAC in their evaluation of the PFHxA proposal. Specifically, SEAC concluded (in Annex E.6 of the Background Document) that *the prevailing performance level of fluorine-free foams will have to be verified in a review*

² https://echa.europa.eu/documents/10162/28801697/pfas_flourine-free_alternatives_fire_fighting_en.pdf/d5b24e2a-d027-0168-cdd8-f723c675fa98

during the transitional period before a restriction will be applied. In addition, in relation to the proposed derogation for large tanks, SEAC concluded that *a similar derogation might be needed also for other types of installations than tank farms*. In this respect the ECHA proposal for a sector-specific transitional period for class-B fires at Seveso sites, beyond those sites with tanks >400 m², does not contradict the evaluation by SEAC but addresses the uncertainties identified by it. Importantly, recall that in its evaluation of the PFHxA proposal, RAC could not conclude that a ban on the use of PFHxA, its salts and related substances for the use in firefighting at industrial installations with containment was the most effective EU wide measure to reduce risks.

The RAC and SEAC Rapporteurs are also evaluating the justification for the derogation for Seveso sites.

1.3. Comparison table

In terms of 3.3.1, we cannot comment on the outcome of SEAC's evaluation of the proposed sector-specific transitional periods. However, as Dossier Submitter we have noted the generally positive response of stakeholders to the feasibility of the proposed transitional periods.

We acknowledge that the largest share of potential emissions is associated with Seveso sites. However, the available analysis does not allow to apportion emissions between 'large tank' Seveso sites and 'other class B' sites. In addition, recall that as outlined above SEAC recommended a review before the entry into effect of paragraph 5(c) of the PFHxA proposal, which would be most likely to affect these 'other class B' types of installations.

In terms of the 'PFAS management plan' provisions in the ECHA proposal versus the reporting provisions in the PFHxA proposal, we appreciate that they appear similar. However, a key difference is that the ECHA proposal requires minimisation of releases 6-months from entry into force, which the PFHxA proposal does not. Similarly, providing a description of *efforts on substitution* (PFHxA) is not equivalent to requiring *a justification for the use of each firefighting concentrate, including an assessment of the technical and economic feasibility of alternatives* (ECHA proposal). We maintain that whilst being less transparent, the provisions in the ECHA proposal were intended to more strongly encourage substitution within the sector-specific transitional periods.

Enforcement of REACH restrictions is undertaken by Member States not ECHA or the Commission, thus reporting of information to ECHA/Commission would not make the PFHxA provision more enforceable *per se*. In terms of having the plans available to enforcement authorities, rather than reporting, (ECHA proposal) this was considered to encourage the enforceability of the proposal as enforcement action could immediately be made if plans were not available when requested (e.g., as part of normal permitting and monitoring of Seveso sites). In terms of transparency, indeed the PFHxA proposal provisions are more transparent. However, the conditions of REACH restrictions need to be motivated with respect to their appropriateness against criteria for effectiveness, practicality and monitorability. Arguments that greater reporting transparency would increase the effectiveness, practicality and monitorability of the proposed restriction should be made in the consultation on the Annex XV report.