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GREENPEACE

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Enterprise & Industry
The European Commission
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1049 Brussels.

Commissioner Dimas
Environment
The European Commission
200 Rue de la Loi,
1049 Brussels.

5th December 2008

Dear Commissioners,

We write to you both as the responsible Commissioners to express our great disappointment with the Commission's review of Annex XIII of the REACH Regulation, which has resulted in document CA/56/2008 of 21 November 2008.

We call on you to reconsider the Commission's position ahead of the meeting of the Competent Authorities on 15-16 December and subsequently to propose revisions to Annex XIII that ensure that the criteria for PBT/vPvB identification will allow for the use of all relevant information.

We believe that in this case the Commission has failed to act according to its mandate provided in REACH recital 76, namely that “ (...)The criteria in Annex XIII should be reviewed taking into account the current and any new experience in the identification of these substances and if appropriate, be amended with a view to ensuring a high level of protection for human health and the environment.”

Neither Annex XIII in its current form, nor its proposed revision by the Commission, are suited to address the problem of increasing contamination of people and wildlife with persistent, bio accumulative and toxic chemicals. This is because the REACH PBT/vPvB criteria do not adequately capture the characteristics of all such substances.

We believe it is unacceptable that the Commission has continuously ignored the expert advice from the subgroup of the REACH Competent Authorities which had pointed out the need for more flexibility and expert judgement in the PBT/vPvB identification itself. We are concerned that the Commission opinion appears biased in favour of the chemical industry arguments, and fails to respect its mandate under the EC Treaty to ensure a high level of protection. The Commission's proposed changes to Annex XIII ignores input from the technical experts from a majority of Member States, and from the public interest organisations WWF, HEAL and CHEM Trust, supporting the same concerns as the majority of Member States.

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Director General: Mr James Leape
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The key point is that under REACH all relevant information should be considered (by a registrant or an authority) in determining whether a substance meets the PBT/vPvB criteria. Unfortunately, with the Commission proposal, the definition for the PBT/vPvB criteria in Annex XIII remain effectively unchanged. This means that companies can conclude “no PBT/vPvB properties” simply on the basis that one specific laboratory test has not been met, even if a chemical might have been proven to be bioaccumulative by another mechanism or even if it can be found in the majority of children in Europe. Moreover, they will be able to legally challenge Member State’s identification of PBTs/vPvBs under Annex XIII.

There are several benefits from allowing other relevant information in identifying PBT/vPvB substances:

- Consistency with the global Stockholm Convention on Persistent Organic Pollutants
- Allowing for the latest scientific evidence
- Efficient controls for all PBTs/vPvBs
- Ensuring legal certainty for companies in identifying PBT/vPvB substances
- Stimulate innovation for safer alternatives

We fear that the Commission’s proposed revision will result in many PBT/vPvB substances being ignored under REACH due to the reliance on a set of narrow laboratory test methods. We believe that it may also lead to many legal challenges that will be decided in court. In our opinion this is contrary to the spirit of REACH and not in the best interests of industry, the public, and the environment.

We look to you to ensure that the Commission’s proposal for the REACH committee will serve a high level of protection for human health and the environment.

In view of the public interest in this matter, we intend to make the contents of this letter more widely available.

Yours sincerely,



Tony Long, Director of WWF European Policy Office.

On behalf of the following organisations :

Centre for International Environmental Law
ChemTrust
European Environmental Bureau
Friends of The Earth Europe
Greenpeace
Health & Environment Alliance
Women in Europe for a Common Future