

EU Environmental Law Bulletin

July 3, 2008

Member State Proposals for First REACH 'Candidate List' Open for Consultation at European Chemicals Agency (ECHA)

Following the procedure established under Article 59 of the REACH Regulation, the competent authorities of several Member States and Norway have submitted their first proposals to ECHA for the inclusion of chemicals into the so-called 'candidate list' of Substances of Very High Concern (SVHCs).

The list of nominations, published on June 30, 2008 by ECHA, contains 16 substances. Submitting substances for nomination to the candidate list is the first step towards submitting SVHCs to the authorization requirement pursuant to REACH Article 57. Once accepted for the candidate list, this will trigger the REACH Article 33 duty to communicate to customers and consumers that these substances are contained in articles above 0.1%.

ECHA has launched a [new section on its website](#) for public consultation on the nominated substances as required by REACH Article 59 (4). Consultation is open until August 14, 2008.

The 16 SVHCs currently nominated are:

- anthracene (PBT)* Germany
- 4,4'-diaminodiphenylmethane (CMR)* Germany
- dibutyl phthalate (CMR) Austria
- benzyl butyl phthalate (CMR) Austria
- cyclododecane (PBT) France
- cobalt dichloride (CMR) France
- diarsenic pentoxide (CMR) France
- diarsenic trioxide (CMR) France
- sodium dichromate, dihydrate (CMR) France
- musk xylene (vPvB)* Netherlands
- bis (2-ethyl(hexyl)phthalate) (CMR) Sweden
- hexabromocyclododecane (PBT) Sweden
- C10-C13 chlorinated paraffins (PBT) UK
- bis (tributyltin) oxide (PBT) Norway
- lead hydrogen arsenate (CMR) Norway
- triethyl arsenate (CMR) Norway

(* PBT=persistent, bioaccumulative and toxic, CMR=carcinogenic, mutagenic and reproductive toxin, vPvB=very persistent and very bioaccumulative.)

Background

Member States (and EEA countries implementing REACH, thus Norway) or ECHA (as requested by the European Commission) may submit dossiers for the identification of SVHCs in accordance with Annex XV to REACH. ECHA is required to publish such proposals thereby inviting all interested parties (e.g. industry, NGOs, other Member States) to

REACH in the Pre-Registration Window and Beyond

A Program for U.S. Businesses
September 10, 2008
Arlington, VA



CONTACT

If you would like more information, please contact any of the following McKenna Long & Aldridge LLP attorneys or public policy advisors:

Ursula Schliessner

+32.2.278.1224

uschliessner@mckennalong.com

Carla Farinhas

+32.2.278.1215

cfarinhas@mckennalong.com

submit comments. Scientific comments on the identification of the substance as SVHC and on uses to be exempted as well as further information related to exposures, alternative substances, and risks will be welcomed. The proposals and the comments received will be forwarded to the Member State Committee (MSC) with a view to reaching agreement on the inclusion of the substances in the candidate list. All substances with scientific evidence of probable serious effects to human health or the environment may be included in this list.

The candidate list will be published on ECHA's website and regularly updated when new substances have been identified as SVHCs. ECHA plans to publish the first list by the end of October 2008.

Authorization Procedure

The identification of SVHCs and the establishment of the candidate list is a crucial part of the authorization procedure set out in REACH to the extent that only substances included therein may eventually appear in the list of those subject to authorization (Annex XIV to REACH). The "authorization list" is to be established by the European Commission on the basis of a recommendation issued by ECHA. Priority will normally be given to substances on the candidate list with PBT or vPvB properties, wide dispersive use or high volumes.

Prior to the adoption of the European Commission's decision for inclusion into Annex XIV, ECHA will once more be required to consult interested parties.

Unless their use is exempted from authorization under REACH (e.g. uses in food or pharmaceuticals) companies wishing to market or use substances included in the Annex XIV authorization list will have to submit an application for authorization to ECHA. Authorizations are granted by the European Commission for specific uses of a substance. The European Commission will grant authorizations if risks are adequately controlled. In certain cases, authorization will only be granted if socio-economic benefits outweigh the risks or where there are no technically- and economically-viable alternatives.

Duties for producers, importers and suppliers

Inclusion in the candidate list will trigger direct obligations for producers, importers, and suppliers of articles. Producers and importers of articles containing listed substances will be required to notify ECHA (as of June 2011 onwards) where quantity and concentration levels of those substances in their articles exceed certain thresholds and they cannot exclude human or environmental exposure. Moreover, suppliers of articles will have to provide customers and consumers with information on the safe use of the articles containing candidate list substances. This communication obligation will apply as soon as the substances are accepted for the candidate list, which may happen before 2011, and possibly as early as October 2008.

Public consultation allows industry to actively participate in the procedure leading to the adoption of the candidate list. Industry is encouraged to seize the opportunity to influence the content of this list by submitting relevant scientific information.

Further Information

Public consultation for identification of Substances of Very High Concern to be placed on the candidate list
http://echa.europa.eu/consultations/authorisation/svhc/svhc_cons_en.asp.

About Us

McKenna Long & Aldridge LLP is an international law firm of attorneys and public policy advisors. The firm provides business solutions in the areas of environmental regulation, public policy and regulatory affairs, complex litigation, international law, corporate law, government contracts, energy, intellectual property and technology, real estate, and finance. To learn more about the firm and its services, log on to www.mckennalong.com.

Subscription Removal

If you would like to be removed from MLA's mailing list, please email brussels@mckennalong.com.

* This bulletin is for informational purposes only and does not constitute specific legal advice or opinions. Such advice and opinions are provided by the firm only upon engagement with respect to specific factual situations. This communication is considered Attorney Advertising.