

Von: Jasmin Klöckner
Gesendet: Montag, 6. Februar 2017 12:07
An: Kerstin Migas
Betreff: Anlage 1 - E Mail Geert: Commission proposal HP14

Hier nochmal die E Mail von Geert zu HP 14

Mit freundlichen Grüßen

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-----Ursprüngliche Nachricht-----

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Gesendet: Dienstag, 24. Januar 2017 10:18
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Betreff: Commission proposal HP14

Dear member,

attached is the proposal of the European Commission for legislation concerning HP14. In this proposal it is now more clearly established that other tests than the calculation method may prevail. In recital 7 it says:

"where a hazardous property of waste has been assessed by a test and by using the concentrations of hazardous substances as indicated in Annex III to Directive 2008/98/EC, the results of the test shall prevail"

The Commission has chosen not to refer to such tests in article 1 of the proposed text, this would have even be better. The option to use leaching tests or bio-tests is however still open. Austria warns for a manifold of solutions in Europe and therefore a disharmonisation. The Austrian response is attached. This letter is confidential.

The EC proposal has been sent to Member States and will also go to Council and Parliament. It is expected that the new law will enter into force before 19 July. There is good expectation that Council and Parliament will adopt the proposal. After that Member States have 1 year to implement it.

The Austrian letter is of importance as it warns that also C&DW may be at risk of being classified hazardous due to HP14. Austria refers to zinkoxide and its low threshold value. Zinkoxide is present in paint and ceramics for instance. As we are after this, we also like to receive any information you may have on the presence and concentration of zinkoxide in C&DW.

Best regards,

Geert

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Proposal for a

COUNCIL REGULATION

amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 ('Ecotoxic')

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

A comprehensive review of Annex III to Directive 2008/98/EC on waste (Waste Framework Directive), which establishes properties of waste which render it hazardous, was undertaken in 2014 through Commission Regulation (EU) No 1357/2014. The main aims of that review were to adapt the properties of waste to technical and scientific progress and to align, to the extent possible, the identification of hazardous wastes with the criteria of the Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (the CLP Regulation).

The only hazardous property not amended during that review was hazardous property HP 14 “Ecotoxic”, as it was considered that the knowledge basis for the assessment of that property needed to be further improved.

At present we are in a legal vacuum as concerns the assessment of ecotoxicity: the existing "Note" in Annex III to the Waste Framework Directive states that the attribution of hazardous property HP 14 is to be made on the basis of the criteria laid down in Annex VI to Council Directive 67/548/EEC which has been repealed as of 1 June 2015.

To address the legal vacuum and the lack of harmonisation concerning the attribution of hazardous property HP 14 “Ecotoxic”, the Commission submitted a draft Regulation for vote in the Committee established under Article 39 of the Waste Framework Directive. The Committee did not give a favourable opinion on the draft Regulation in its meeting of 25 October 2016.

The main concerns expressed by the Committee related to (1) the need to clarify that Member States may still apply test methods to assess ecotoxicity and (2) the likelihood that the calculation formulae envisaged by the Commission would lead to a change of classification from non-hazardous to hazardous of certain wastes types and that would impact negatively on the recycling of those wastes due to increasing costs of managing the waste. The waste types mentioned in this context were incineration bottom ash and shredder residues.

Thus, in accordance with the procedure set out in Article 5a of Council Decision 1999/468/EC, a Proposal for a Council Regulation is submitted to Council and forwarded to the European Parliament.

Proposal for a

COUNCIL REGULATION

amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 ('Ecotoxic')

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives¹, and in particular Article 38(2) thereof,

Whereas:

- (1) Annex III to Directive 2008/98/EC lists properties of waste which render it hazardous.
- (2) Directive 2008/98/EC states that the classification of waste as hazardous should be based, inter alia, on the Union legislation on chemicals, in particular concerning the classification of mixtures as hazardous, including concentration limit values used for that purpose. Commission Decision 2000/532/EC² established a list of the types of waste in order to encourage a harmonised classification of waste and to ensure the harmonised determination of hazardous properties of waste within the Union.
- (3) Annex III to Directive 2008/98/EC provides that the attribution of the hazardous property HP 14 ('Ecotoxic') is to be made on the basis of the criteria laid down by Annex VI to Council Directive 67/548/EEC³.
- (4) Directive 67/548/EEC was repealed from 1 June 2015 and replaced by Regulation (EC) No 1272/2008 of the European Parliament and of the Council⁴. That Directive may, however, continue to apply to some mixtures until 1 June 2017, in case they were classified, labelled and packaged in accordance with Directive 1999/45/EC of the

¹ OJ L 312, 22.11.2008, p. 3.

² Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ L 226, 6.9.2000, p. 3).

³ Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 196, 16.8.1967, p. 1).

⁴ Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

European Parliament and of the Council⁵ and already placed on the market before 1 June 2015.

- (5) Annex III to Directive 2008/98/EC was replaced by Commission Regulation (EU) No 1357/2014⁶ in order to align, where appropriate, the definitions of the hazardous properties with Regulation (EC) No 1272/2008, and replace references to Directive 67/548/EEC by references to Regulation (EC) No 1272/2008.
- (6) The definition of the hazardous property HP 14 ('Ecotoxic') was not amended by Regulation (EU) No 1357/2014 as an additional study was needed in order to ensure completeness and representativeness as regards the information on the possible impact of an alignment of the assessment of the hazardous property HP 14 ('Ecotoxic') with the criteria laid down in Regulation (EC) No 1272/2008. That study being completed, it is appropriate to reflect its recommendations in the assessment of hazardous property HP 14 ('Ecotoxic') for waste set out in Annex III to Directive 2008/98/EC, and to align that assessment, to the extent possible, with the criteria laid down in Regulation (EC) No 1272/2008 for the assessment of ecotoxicity of chemicals. When determining the hazard classification of waste for hazardous property HP14 ('Ecotoxic') by applying calculation formulae, generic cut-off values, as defined in Regulation (EC) No 1272/2008, should be applied.
- (7) When a test is performed to assess waste for the hazardous property HP14 'Ecotoxic', it is appropriate to apply the relevant methods established in Commission Regulation (EC) No 440/2008⁷ or other internationally recognised test methods and guidelines. Decision 2000/532/EC provides that, where a hazardous property of waste has been assessed by a test and by using the concentrations of hazardous substances as indicated in Annex III to Directive 2008/98/EC, the results of the test shall prevail. Furthermore, Article 12 of Regulation (EC) No 1272/2008, in particular Article 12(b) and the methodologies for its application, should be taken into account.
- (8) It is appropriate to allow companies and competent authorities sufficient time to adapt to the new requirements.
- (9) The Committee referred to in Article 39 of Directive 2008/98/EC did not deliver an opinion on the measures provided for in this Regulation. The measures should therefore be adopted by the Council in accordance with Article 5a(4) of Council Decision 1999/468/EC⁸,

HAS ADOPTED THIS REGULATION:

Article 1

Annex III to Directive 2008/98/EC is amended as follows:

- (1) The entry for HP 14 'Ecotoxic' is replaced by the following:

⁵ Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (OJ L 200, 30.7.1999, p. 1).

⁶ Commission Regulation (EU) No 1357/2014 of 18 December 2014 replacing Annex III to Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives (OJ L 365, 19.12.2014, p. 89).

⁷ Commission Regulation (EC) No 440/2008 of 30 May 2008 laying down test methods pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 142, 31.5.2008, p. 1).

⁸ Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

"HP 14 'Ecotoxic': waste which presents or may present immediate or delayed risks for one or more sectors of the environment.

Waste which fulfils any of the following conditions shall be classified as hazardous by HP 14:

- Waste which contains a substance classified as ozone depleting assigned the hazard statement code H420 in accordance with Regulation (EC) No 1272/2008 of the European Parliament and of the Council* and the concentration of such a substance equals or exceeds the concentration limit of 0.1%.

$$[c(H420) \geq 0.1\%]$$

- Waste which contains one or more substances classified as aquatic acute assigned the hazard statement code H400 in accordance with Regulation (EC) No 1272/2008 and the sum of the concentrations of those substances equals or exceeds the concentration limit of 25%. A cut-off value of 0.1% shall apply to such substances.

$$[\sum c (H400) \geq 25\%]$$

- Waste which contains one or more substances classified as aquatic chronic 1, 2 or 3 assigned to the hazard statement code(s) H410, H411 or H412 in accordance with Regulation (EC) No 1272/2008, and the sum of the concentrations of all substances classified as aquatic chronic 1 (H410) multiplied by 100 added to the sum of the concentrations of all substances classified as aquatic chronic 2 (H411) multiplied by 10 added to the sum of the concentrations of all substances classified as aquatic chronic 3 (H412) equals or exceeds the concentration limit of 25%. A cut-off value of 0.1% applies to substances classified as H410 and a cut-off value of 1% applies to substances classified as H411 or H412.

$$[100 \times \sum c (H410) + 10 \times \sum c (H411) + \sum c (H412) \geq 25\%]$$

- Waste which contains one or more substances classified as aquatic chronic 1, 2, 3 or 4 assigned the hazard statement code(s) H410, H411, H412 or 413 in accordance with Regulation (EC) No 1272/2008, and the sum of the concentrations of all substances classified as aquatic chronic equals or exceeds the concentration limit of 25%. A cut-off value of 0.1% applies to substances classified as H410 and a cut-off value of 1% applies to substances classified as H411, H412 or H413.

$$[\sum c H410 + \sum c H411 + \sum c H412 + \sum c H413 \geq 25\%]$$

Where: \sum = sum and c = concentrations of the substances.

* Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1)."

- (2) The note below the entry for HP 15 is deleted.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 12 months after the date of its publication in the OJ.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Brussels,

For the Council
The President

Austrian comments the draft Commission Regulation Amending Annex III to Directive 2008/98/EC as regards the Hazardous properties on HP14 (ecotoxic)

Summary

The Austrian Ministry of Agriculture, Forestry, Environment and Water Management can only accept the **limit for ozone-depleting substances in HP14** pursuant to CLP legislation, but **objects** to the proposed calculation formulae (derived from Chemicals Legislation) with regard to **aquatoxic substances** for the following reasons:

- **The proposed formulae could be applied to wastes only in exceptional cases** as in most cases the waste composition is not known. The majority of waste streams vary in their composition and are heterogeneous. The approach relying on **chemical (elemental) analysis**, as it is the case with the proposed calculation method, is technically inappropriate for the characterization of complex solid waste streams as **only the elements are determined and not their chemical compounds**. **Calculating the most aquatoxic compounds by a computer programme will always lead to an “over-estimation” and not reflect the actual situation.**
- **The proposal leads to a disharmonization of waste classification within the EU.** As the results of tests prevail over the calculation method according to Commission Decision 2014/955/EU, Member States will apply their **national tests or approaches** (e.g. leachate test and comparison of pollutants with threshold values for ecotoxic substances or bio-tests with different organisms under different test conditions (type of test organisms, leachate preparation and dilution of samples, pH-moderation and separation of precipitates after pH adjustments have great impacts on the results). **Therefore comparison of results is not possible and will lead to market distortion as a lot of consequences are linked to the classification of waste as hazardous.**
- **Bio-tests pursuant to CLP and REACH-Regulation are not suitable for testing of wastes**, as in most cases wastes are heterogeneous mixtures, where ecotoxic effects can be triggered by matrix effects (e.g. salt concentration, organic matrix) or synergy-effects of salts, which *per se* are not ecotoxic. Thus, harmonised **bio-tests** specifically developed for waste testing are urgently needed at EU level, but the elaboration will take some years so that the present proposal seems to be premature.
- Using the calculation formulae a lot of metals such as **selenium (H413), copper (H410), zinc (H410) in non-massive form (e.g. powders and granules)** will become **hazardous by HP14**
- A very great problem poses zinc oxide in waste. Waste containing more than 0,25 % (=calculated limit value for ZnO applying the proposed formulae) of **zinc oxide (H410)**, which will be rendered hazardous in the future. The applications of zinc oxide powder are numerous. It is added into **plastics** (e.g. zinc oxide coating protects from solar radiation and decreases the oxidation rate), **ceramics** (e.g. ceramic glaze and frit compositions), **specific glass** (e.g. zinc oxide is used for replacing lead oxide), **cement, rubber, lubricants, paints and pigments, ointments, oral care**

products, baby powder and barrier creams, lotions against sunburn or to treat diaper rashes, anti-dandruff shampoos, adhesive, sealants, concrete manufacturing, coatings for paper, foods, batteries, fire retardants, food packaging, cigarette filters_etc.

The following **very relevant waste streams** will be affected, as there are hazardous and non-hazardous mirror entries in the list of waste:

- **construction and demolition waste (due to zinc oxides in paints, ceramics, copper oxides etc.)**
- **zinc ashes and skimmings (due to the content of zinc oxide)**
- **shredder light fraction from the processing of metallic waste and dust from shredding of waste containing metal (due to the content of fine copper, zinc, zinc oxide and brominated flame retardants such as PentaBDE, which are classified as “new POPs” without an EU-wide limit value, which triggers the classification as hazardous waste)**
- **non-hazardous industrial sewage sludge and sewage sludge from municipal wastewater treatment plants (due to the content of zinc, copper and other metal oxides)**
- **lightly contaminated soil or soil with natural geogenically determined levels of zinc oxide, copper oxides**
- **slag from municipal waste incineration plants (due to zinc oxides and other metal oxides)**
- **fly ash from conventional combustion plants and biomass incineration (due to zinc oxides and other metal oxides)**
- **the rubber fraction separated from used tyres (due to zinc oxides and other metal oxides)**
- **some metallurgical slags, presently classified as non-hazardous waste**
- **foundry sands containing small amounts of metals and metal oxides**
- **paints and pigments containing ZnO or CuO**
- **even pre-sorted (presently non-hazardous) medical waste and waste cosmetics (containing zinc oxide).**

Especially construction and demolition waste, fly ashes from incineration processes (even biomass ash) and shredder residues constitute major waste streams in a lot of Member States.

The calculation formula therefore will have **tremendous effects on the waste management sector**, as treatment of hazardous waste is allowed in **facilities with a permit for treatment of hazardous waste only** (exception: incinerators, but a license must be in place for the co-incineration of hazardous wastes).

What does this mean in practise?

Will waste cosmetics such as creams and lotions with zinc oxide be hazardous waste in the future and require separate collection from municipal household waste?

As at EU level no risk-based approach has been laid down in the waste management legislation (except partially for the “Green List” of wastes in the EU Waste Shipment Regulation), does this imply that the criterion HP14 can never be neglected, not even in case of waste sent to landfill sites (other than those for inert waste) or incinerators?

Landfilling of e.g. C&D waste (hazardous due to ZnO) would be allowed in the future either only on specific landfill sites for hazardous waste or on landfills for non-hazardous wastes which comply with the criteria for acceptance of hazardous waste.

Shredder residues would require incineration in incinerators for hazardous waste or in suitable incinerators which have got an explicit permit for incineration of specific hazardous waste. In Austria (and maybe other Member States) no incineration facility for non-hazardous waste was granted an additional permit for incineration of hazardous waste.

Even if facilities which, up to now have treated the above mentioned (presently non-hazardous) wastes without any problems will be allowed to treat these wastes also in the future, it must be considered that **any modification of these treatment plants** (e.g. adjustment to the state of the art or even an increase of the storage capacity) will trigger a **necessary permit for treatment of hazardous waste, a permit in accordance with the Industry Emission Directive or the Impact Assessment Act** etc.

Any legal adjustments at EU level using a risk-based approach for the hazardous property HP14 would need some time.

Furthermore the classification of the waste as hazardous by HP14 will also have a great impact on the **acceptance of recovered / recycled materials**. F.i. construction and demolition waste, which has to be classified as hazardous waste due to the content of zinc oxide (used in paints and pigments, in ceramics and in cement) or copper oxides (copper patina) will not be accepted as a substitute for virgin material in practise anymore, thus endangering recycling rates fixed at EU level and the Circular Economy Package.

Even the amount of wastes subject to the export ban to non-OECD countries will increase.

Testing:

Waste for which mirror entries exist or for which a proof is needed that HP14 is not relevant. (e.g. waste with varying composition) would require testing of each load and bio-tests are very expensive. For waste streams resulting from a defined process with defined input test models could developed requiring less often testing.

All these tremendous effects have not been evaluated at EU level yet. Furthermore a **complete review of the European List of Waste seems indispensable, when defining HP14 (e.g. zinc skimmings with high contents of zinc oxide could not be classified as non-hazardous waste any more). A non-appropriate list of waste and a very stringent approach towards HP14 is not acceptable in our view.**