Ministry of Infrastructure and the Environment

> Return address

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IENM/BSK-2012/201758

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Dear Mr. Willmott,

Through this letter, I want to draw your attention to some concerns from the Netherlands, regarding the proposed inclusion of chromium trioxide and chromic acid into Annex XIV of the REACH regulation. These substances are widely used in the hard chrome plating industry.

First of all, I would like to emphasize that the Netherlands supports inclusion of chromium trioxide and chromic acid in Annex XIV based on their widespread use and toxicological properties. However we have some concerns regarding the disproportional economic impact of this measure for the industry sectors involved in the current proposal.

The Dutch chrome plating industry has improved its environmental performance in the past decades considerably and is still working on further reduction of workers exposure and minimizing emissions to the environment. We have no detailed information on the performance of the sector in other EU Member States, but we expect that also in the other Member States, industry is working on continuous improvement of it's performance.

The Dutch industry associations are currently anticipating authorization applications in view of the proposed amendment of Annex XIV. In their preparations they notice that the eventual authorization conditions are not known at the moment of application, therefore the acceptability of the application is difficult to predict and hence it is difficult for the companies to ascertain their customers undisturbed supply.

I am fully aware that the socio-economic analysis is part of the application for authorization, but one should realize that a proposal for inclusion of substances like chromium trioxide and chromic acid may introduce immediate economic damage for the sector, regardless of future decisions on authorization applications. The current proposal from the Commission for inclusion of chromic acid and chromium trioxide in Annex XIV lacks adequate predictability of authorization applications for the chrome plating industry.

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It is envisaged that those companies that rely heavily on chrome plated articles will start to buy - as a precautionary measure - outside the EU. These customers of the chrome plating industry simply will not take the risk that at a certain time in the near future their suppliers are no longer authorized to produce. According to the industry, this effect is already beginning to emerge. Having ensured an alternative supply of materials customers will not switch back to their original suppliers once there is a favorable decision on their authorization applications.

Therefore, in my opinion, a key issue would be to reduce the uncertainty of the outcome of the application process for industry. I have the following concrete suggestions how this can be achieved.

1. Create a longer transitional period by a prolonged Latest Application Date (LAD) to allow industry sufficient time to provide an application for authorization and get the authorization well before the LAD, providing their customers supply security;
2. Create clarity whether minimal risks (detection level or concentrations around 10^{-6} risk level) can be regarded as
    a. adequate control,
    b. appropriate and effective (in the sense of article 60(4)(a)) for the socio-economic route.

Ad 1. Create a longer transition period
Companies can apply for authorization immediately after chromium trioxide and chromic acid are added to Annex XIV. A longer transitional period will allow them to provide well before the sunset date (more) certainty to their customers that they will receive an authorization and will be able to continue supply. The Netherlands position is that a LAD between 48 and 60 months after Entry into Force would be adequate.

Ad 2a. Use a 'minimal risk' approach if properly demonstrated as adequate control
The Netherlands industry reported in the public consultation on the prioritization of substances for inclusion in Annex XIV, that workers exposure is close to zero with workplace concentration limits close to detection limits (approximately 3 ppm). As industry pointed out in their comments brought forward during the public consultation and afterwards, the risks associated with workplace concentrations of 1 ppm are approximately 10-6 per year. According to the comments by the European industry association in the public consultation for the prioritization, workplace concentrations in factories normally are between less than the detection limit and 50 ppm.

I would suggest a clear statement in Annex XIV, stating that the risks to human health (workers) is considered to be adequately controlled at the current detection limit levels (more or less the 10^{-6} risk level).

Ad 2b. Use a 'minimal risk' approach as appropriate and effective for the socio-economic route
The REACH regulation states that for substances such as chromium trioxide and chromic acid, industry has to show that the socio-economic benefits outweigh the risks to human health.
As chromic acid and chromium trioxide are non-threshold carcinogens, there will be a risk to human health if there is any exposure. However, the socio-economic route would allow a certain risk level, as long as the socio-economic benefits

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outweigh these risks. As the outcome of this equation in the decision on the authorization application is at this moment unpredictable, the sector faces an uncertain outcome of the decision process by the authorities. This would cause an undesirable situation.

I would suggest to include in Annex XIV a pre-amble which states that the risks to human health (workers) is considered to be controlled at an appropriate and effective level at concentration levels at or below the current detection limit (more or less the 10^{-6} risk level). Even when risks may be considered to be controlled at this level, I consider the advantage of inclusion in Annex XIV that industry is still obliged to develop substitution plans.

Conclusion
As indicated, industry already faces economic impacts from the upcoming inclusion of chromium trioxide and chromic acid in Annex XIV.
The Netherlands supports inclusion of these substances in Annex XIV but wants to emphasize the need to reduce the uncertainty for this sector. In our opinion we need a balance between safe use of these substances and achievable targets. In other words, we need to provide a clear message to industry as to what they could do to ensure appropriate and effective risk management measures in relation to an acceptable level of risk to human health and the environment.

The preferred solution I see at this moment is to set a later LAD, of 48-60 months after entry into force and in addition to this, include a clear statement in Annex XIV, e.g. in conditions to the review period, which states that the risks to human health (workers) are considered to be adequately controlled at levels at the current detection limit (more or less the 10^{-6} risk level).

This letter was also sent to your colleague Bjorn Hansen of DG Environment.

Yours sincerely,
Member of the management team,
Safety and Risk Department,

Joris van der Voet