18th February 2020

EEB Comments on SEAC draft opinion for D4/D5/D6

We strongly endorse the proposal to restrict D4/D5/D6. The inclusion of D6 under the scope of this restriction will prevent this potential regrettable substitution.

We would also like to support SEAC in its rejection to requests for longer transition periods that have not been substantiated with sufficient reliable data.

We would also like to encourage SEAC to consider the concept of essential uses when assesing requests for derogations and for longer transtitional periods.

The concept of essential use for PFAS has been developed by Cousins et al.[1] Following the example of the Montreal Protocol

This approach is based on the example of the Montreal Protocol, which phased out the use of ozone-depleting chlorofluorocarbons except for certain 'essential' uses, and which defined the concept of 'essential use' in Decision IV/25.[19] The two elements of an essential use are that a use is "necessary for health, safety or is critical for the functioning of society" and that "there are no available technically and economically feasible alternatives".

Following this approach, no derogations or longer transitional periods should be allowed for uses of and proposes stopping the use of D4/D5/D6 which are not essential or when safer alternatives exist.

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1 Cousins I T et al. The concept of essential use for determining when uses of PFASs can be phased out. Environmental Science: Processes & Impacts. Issue 11, 2019. https://pubs.rsc.org/en/content/articlelanding/2019/em/c9em00163h#!divAbstract

European Environmental Bureau
Europe's largest network of
environmental citizens' organisations
www.eeb.org
International non-profit association –
Association internationale sans but lucratif

Boulevard de Waterloo 34, B-1000 Brussels
Tel.: +32 2 289 10 90
Email: eeb@eeb.org

EC register for interest representatives:
Identification number: 06798511314-27

For cosmetic products, it is clear that effective alternatives to D4/D5/D6 exist. For example, products bearing the Nordic Swan ecolabel cannot contain these SVHCs. Nor is there any indication of reduced performance when alternatives are used. Clearly, there is no reason for any exemptions for any cosmetics in using these SVHCs.

Ordinarily we would argue that "high risk" products should have shorter transition times. Here, "risk" is estimated by the amount in the environmental stock/compartment (direct risk to the consumer is not a concern). The restriction proposes very long (5 year) transitional period for cosmetic products, and some industry comments ask for still longer transition times. Against this claim, we must reiterate that widely dispersive leave-on products account for 90+% of the "risk" (emissions to the environment) from these known SVHCs, and should be replaced as soon as possible.

Leave-on cosmetic products are a high risk non essential use and alternatives are available in the market, therefore the requested transitional period of 5 years should not be accepted.

SILICONE

Industry has argued (in many of the PC comments) that D4/D5/D6 have no intended use in the product, but are residuals in the manufacture of silicone polymer. Thus the product formulator has little control over the residual D4/D5/D6 level. Of course, a residual cannot be considered an essential use.

Industry's own statements demonstrate clearly that low-residual silicone polymer is available. For example, Bayer (comment 2248) say explicitly that their products contain < 0.1% of D4 and D5, and note correctly that these products therefore do not fall under the scope of the restriction. Moreover, no (non-confidential) comments stated that the low-residual polymers would be more expensive. Therefore the problem of D4/D5/D6 residuals is one that should be communicated by formulators to their suppliers.

We suggest that ECHA consider engaging directly with silicone polymer manufacturers, both to get better data on residual concentrations, and to alert them to the impending necessity of keeping residuals below the 0.1% limit.

REFORMULATION TIME

Reformulation time and cost has been extensively reviewed in the (revised) Background Document.

It is estimated that about 11% of cosmetics formulations would need to be reformulated to eliminate D4/D5/D6 (or between 8% and 16% per the DS) [BD p48]. The BD expresses concerns whether

reformulations can be completed in time if many products need to be reformulated. Resource limits (e.g., expertise within one company) might mean that more time is required to reformulate a large set of products.

However, these reformulations should not be considered independently. It is quite likely that, in most cases, a reformulation of one product will inform other reformulations in the same category. Even with D5, for which some commentors assert that there is no single drop-in substitute, reformulation is required for a fairly small number of uses and technical functions. Moreover, the push to reformulation across the entire industry, and especially the widespread presence of products on the market that *already use non-restricted alternatives*, should result in a relatively short reformulation time.

It must be reiterated that the proposed restriction is not a new idea; industry has had years to anticipate these reformulations. D4 and D5 were identified by the MSC as meeting vPvB criteria in April 2015 [BD p6]. D4, D5, and D6 were formally identified as SVHC compounds in June 2018 [BD p7]. Thus, the industry has known for almost five years that these compounds would be subject to restriction as SVHC. Manufacturers have been legally required to advise downstream users on risk management for a year and a half (and arguably should have been doing so for the last five years). It is clear that known vPvB substances should not be used in "widely dispersed" products like cosmetics. We echo the words of the BD: "the reformulation should have occurred already under existing legal obligations" [BD p31]

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