



**CHEMTrust**  
Protecting humans and wildlife  
from harmful chemicals



**EEB**  
European  
Environmental  
Bureau



Bund für  
Umwelt und  
Naturschutz  
Deutschland

**To:**

Peter van der Zandt, Director of ECHA  
Giuseppe Casella, Head of Unit REACH, DG Grow  
Cristina de Ávila, Head of Unit Safe and Sustainable Chemicals, DG Environment

**Copied:**

Environment Ministries of Germany, the Netherlands, Sweden, Denmark and Norway

16 May 2022

We, the signatories of this letter, environmental NGOs working on phasing out toxic substances globally, welcome the EU Commission's and ECHA's progress to ban PFHxA, its salts and related substances. This significant group of PFAS should be banned from all non-essential uses since alternatives are readily available. However, we are writing to you today to raise concerns and make sure the process stays in line with the intentions set by the Chemicals Strategy for Sustainability.

The EU's [restriction on PFHxA, its salts and related substances](#) ("C6") is a crucial regulatory measure: it proposes to ban a large sub-class of PFAS that leads to high releases and exposures. [The SEAC's meeting of 1st December 2021](#) finalised a two-year process with a final opinion proposing few derogations and limited transition times. Notably on fire-fighting foams, [it proposes](#) a three-year phase-out and only one limited derogation. This restriction proposal is an important step towards a non-toxic environment.

**We have the two following concerns:**

**A) The delay in adopting the PFHxA restriction;**

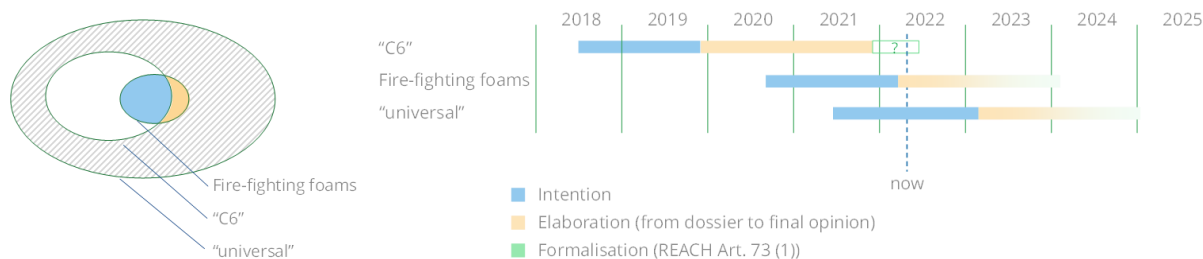
**B) The weaker proposal of the restriction on PFAS in firefighting foams.**

- A) Six months after its adoption by ECHA's committee for socio-economic assessment (SEAC), the final opinion has not been submitted to the Commission yet, despite REACH calling for ECHA to submit the final opinion "without delay" to the Commission (REACH Art. 72 (1)). This delay and the recent publication of a restriction proposal on [PFAS in fire-fighting foams](#) (see concern B) risk derailing the action on PFHxA. The EU's delay is in stark contrast with the rapid and general bans [enacted e.g. in states](#) such as Washington State, Illinois and Connecticut in the U.S.
- B) The PFAS fire-fighting foam restriction is supposed to set the tone for the [universal PFAS restriction](#) (dossier to be published in early 2023). However, it addresses the same uses in FFF as the C6 restriction, while proposing more derogations and vastly longer transition times (overview table available [here](#)). This proposal introduces measures that will mostly profit the commercial interests of PFAS producing companies at the expense of their fluorine-free competitors. It also uses ECHA's and other's resources inefficiently and weakens the C6 restriction: these are hardly steps in the right direction.

# What needs to be done *now* on PFAS

To avoid backtracking and weakening the PFHxA restriction, we urge you to:

- **Ensure that ECHA submits the final consolidated opinion of the RAC and SEAC committees on the C6 restriction without further delay to the Commission.**
- Ensure that evidence collected and conclusions drawn under the **C6 restriction** are **properly taken into account** and explicitly referred to in the firefighting foam PFAS restriction.
- **Limit the scope** of the foams restriction **to those PFAS that are not covered by the C6 restriction** (the amber area in the figure below) in order to avoid double regulation and improve regulatory predictability.
- **Ensure that the universal PFAS restriction does not weaken decisions** under other restrictions and that it **focuses on the PFAS that are not regulated yet** (hatched area in the figure<sup>1</sup>).



By taking these actions, the EU will not only protect citizens and the environment in Europe, but also set the scene for global action on PFHxA and other PFAS under the Stockholm Convention.

Signatories:

Arnika Association (Czech Republic)

BUND - Friends of the Earth Germany

International Chemical Secretariat (ChemSec)

CHEM Trust

European Environmental Bureau (EEB)

Health and Environment Alliance (HEAL)

International Pollutants Elimination Network (IPEN)

Tegengif - Erase all Toxins (The Netherlands)

<sup>1</sup> Other existing restrictions on C8 (PFOA), C9-C14 and PFHxS as well as restriction #73 are not shown in the Venn diagram for simplicity reasons.

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[annelies@tegengif.nl](mailto:annelies@tegengif.nl);

**Subject: Restriction of PFHxA and PFASs in firefighting foams**

Dear Sir or Madam,

Thank you for your letter dated 16 May 2022<sup>1</sup> regarding the proposal by Germany for a restriction of undecafluorohexanoic acid (PFHxA) its salts and related substances (C6) and a proposal prepared by ECHA at the request of the European Commission for a restriction of per and polyfluoroalkyl substances (PFASs) in firefighting foams.

The letter raises a concern as to the length of time elapsed between the adoption of SEAC's opinion on the PFHxA proposal in December 2021 and the submission of the RAC and SEAC to the Commission. The combined opinions of RAC and SEAC were submitted to the Commission on 10 May 2022. A technical problem with the ECHA website prevented the publication of the combined RAC and SEAC opinion until 16 May 2022 and we apologise that you were not aware that the opinions had been sent when you wrote to us.

The proposed restriction of PFHxA its salts and related substances was one of the most technically challenging evaluations that RAC and SEAC have undertaken, which resulted in lengthy opinions supported by several technical annexes. Quality assuring such documents to ensure clarity and to identify any inadvertent errors and inconsistencies requires meticulous review but is necessary to minimise the likelihood of misunderstandings and delays at the decision-making stage. We strive to undertake these checks more quickly than was achieved in this case. However, on this occasion, it took longer than normal because key staff were also working on the proposal for a restriction of PFASs in firefighting foams. We hope to submit opinions to the Commission on restriction proposals more quickly in the future.

We note that the RAC and SEAC opinions identified several significant concerns related to the assessment underpinning the proposed restriction of PFHxA and made recommendations to modify certain conditions and transitional periods, including for the parts of the proposed restriction relating to firefighting foams. These recommendations are important to consider when comparing the conditions of the proposed restriction on PFHxA and the conditions of the proposed restriction on PFASs in firefighting foams.

With respect to the proposal restriction of PFASs in firefighting foams, we can confirm that the intention of this proposal is not to weaken any existing legislation on PFASs in firefighting foams. Where necessary we will ensure that text in the Background Document is clarified. Where there

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<sup>1</sup> ECHA received this letter on 3 June 2022

are legally binding restrictions under REACH or the POPs regulation our baseline assumes that these will continue to apply. Our understanding is that this is also the approach followed by the UPFAS Member States in the Annex XV report. However, whilst the evaluation of the PFHxA proposal provided useful insight and input to the assessment performed for the preparation of the proposed restriction of PFASs in firefighting foams it is not appropriate, at this time, to assume that the PFHxA proposal will become part of the legislative baseline. On this basis ECHA's proposed restriction also covers PFHxA in firefighting foams as well as any other PFASs that could be used to avoid a restriction on PFHxA. Regrettable substitution of PFASs in firefighting foams has been observed on multiple occasions since the banning of PFOS and there is evidence that PFASs beyond C6 are already being used in firefighting foams. The proposal to restrict all PFASs in firefighting foams is therefore the only way to ensure that PFASs are not used in firefighting foams, which would also be in line with the objectives of the CSS. We acknowledge that the Commission will have an important role to integrate all of the various restrictions on PFAS to avoid double regulation and ensure maximum clarity to stakeholders.

However, irrespective of whether the Commission and Member States pursue the PFHxA or PFASs proposal for firefighting foams, the phase out timeline (in real terms) under both proposals would be expected to be similar, as can be seen from the summary table in the appendix to this letter. This table is based on the table developed by EEB but corrects several misunderstandings of the PFHxA proposal and applies similar assumptions on the entry into force for the two restrictions. In many instances the ECHA proposal would result in significant shorter phase out timelines. It is also important to note that the ECHA proposal contains two important provisions that the PFHxA proposal does not. The first is a requirement after six months to only use PFAS containing foams on class B fires (PFAS foams are also used on other types of fires). The second is a requirement for users benefiting from a transition period to develop and update annually a 'PFAS foam management plan' and implement measure to minimise releases in the event of use, which will ensure that PFAS containing foams are only used for as long as necessary within transitional periods and should they be used releases would be kept to a minimum. The proposal of ECHA to define the uses with the longest transitional periods on class B fires at SEVESO sites, rather than on large tanks, is based on an assessment that this is a more fit-for-purpose approach recognising that industrial applications where PFAS containing foams are challenging to substitute currently extend beyond large tank scenarios and include sites where multiple types of flammable liquids are used (as recognised by SEAC in their recommendation in their opinion on the PFHxA proposal to review the proposed five year transitional periods for class B fires prior to its entry into force). We will ensure that the justification for this choice is elaborated further in the Background Document for the proposal.

Finally, as well as providing the solution to the problem of PFASs in firefighting foams, the ECHA restriction proposal is the first to use a group-based hazard and risk assessment for the entire PFAS class. This is an important milestone towards achieving the objectives of the EU chemicals policy and is already providing important learnings for the Member States as they finalise their Annex XV report for submission in January 2023. As such, the use of ECHA's resources is well justified.

Yours faithfully,

(e-signed)<sup>2</sup>

Peter VAN DER ZANDT  
Director of Risk Management

Cc:

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<sup>2</sup> As this is an electronic document, it is not physically signed. This communication has been approved according to ECHA's internal decision approval process.

Helsinki, 27 June 2022

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PZ/ps

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## Appendix

### Comparison table of restriction conditions and transitional periods proposed in the PFHxA and PFASs restriction.

	PFHxA and related substance (DE proposal as modified by RAC/SEAC)		PFASs in firefighting foams (ECHA proposal)	
<b>Entry into force</b>	Assumed 2023 (1 year from opinions sent to COM – Q2 2022)		Assumed 2024 (1 year from opinions sent to COM – Q2 2023)	
<b>Manufacture of substance</b>	EiF+3y	2026	NA	-
<b>Formulation of firefighting foams</b>	EiF+5y	2028	EiF+10y <sup>3</sup>	2034
<b>Mandatory foam management plans<sup>4</sup></b>	-	-	EiF+6months	2024
<b>Uses (class B fires only; 3 years PFHxA and 6 months for PFASs in firefighting foams)</b>				
Training	EiF+5y (emissions must be minimised)	2028	EiF+1.5y	2026
Testing				
Municipal (class B)	EiF+5y <sup>1</sup>	2028	EiF+1.5y	2026
Civilian ships (class B)			EiF+3y	2027
Portable extinguishers (class B)			EiF+5y	2029
Seveso establishments (class B)	NA		EiF+10y	2034
Large tanks <sup>2</sup>	EiF+12y	2035	NA	
Others (incl. defence)	EiF+5y	2028	EiF+5y	2029

1 – Based on paragraph 5(c) of proposed SEAC conditions in opinion; TP of EiF+3 y for non-class B applications. SEAC recommended that this TP is reviewed before entry into effect

2 - PFHxA targeted large tanks. ECHA's proposal instead targets Seveso establishments, which includes most, if not all, installations with these large tanks plus others where transition to alternatives is likely to require extended time. The TP for Seveso could therefore be compared to this large tanks exemption in the PFHxA proposal;

3 - This is to ensure that PFAS containing foams are available throughout the transitional period. Fire safety is the paramount concern here.

4 – pre-condition for continued use of PFAS-containing foams during TPs; revised annually



16 of August 2022

**To:**

Peter van der Zandt, Director of ECHA

**Subject: Restrictions of PFHxA and PFAS in firefighting foams**

Dear Mr. Van Der Zandt,

Thank you very much for your detailed reaction dated 27<sup>th</sup> June as a reply to our earlier letter. The publication of the final opinion PFHxA following our letter has reassured us that the process is moving forward, and that the REACH Art. 73(1) clock has now started ticking. Nevertheless, our overall concern regarding weakening of the measures proposed in the final opinion of the PFHxA restriction remains unaddressed.

In the following, we would like to raise a few points to complement statements in your letter or to react to these. We would very much appreciate receiving clarification from you on the points and questions below (see Appendix I).

Yours faithfully,

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## **Appendix I: Queries to be addressed by ECHA regarding the PFHxA and PFAS in firefighting foams restrictions:**

### **1. Regarding ECHA’s overall approach to these overlapping restrictions:**

- 1.1. You write that the “intention of [the foams] proposal is not to weaken any existing legislation on PFAS for firefighting foams”. We welcome updating of the Background Document to the ECHA proposal<sup>1</sup> to clarify this. However, our main worry was the weakening of proposed legislation, i.e. of the opinions of the scientific committees (on PFHxA), which are supposed to serve as the default basis for the Commission’s decision according to Art. 73.
- 1.2. Your statement that “it is not appropriate, at this time, to assume that the PFHxA proposal will become part of the legislative baseline” surprised and concerned us.
  - 1.2.1. The Annex XV dossier and the scientific opinions are the default basis for the actual decision<sup>2</sup>; we are wondering on what grounds ECHA pulls into question this logic, which is, additionally, clearly within the remit of the Commission’s decision making.
  - 1.2.2. Your claim that the PFHxA restriction might never be adopted is also of great concern to us. It would delay the phasing out of the use of certain PFAS in many sectors, such as textiles and food packaging, by relying on an presently unknown outcome of the universal restriction. Every year of delay in restricting PFAS means an increasing PFAS pollution burden due to their extreme persistence.
- 1.3. We are also worried that references to other legislators’ faster and more far-reaching regulation – demonstrating both political will and technical feasibility – are often ignored, including by your letter.

### **2. Technical elements:**

- 2.1. In your letter, you write that “there is evidence that PFASs beyond C6 are already being used in firefighting foams”. Neither the PFHxA restriction documents nor ECHA’s Annex XV dossier (including its Annex and Appendix) contain such evidence. Could you please share this evidence with us?
- 2.2. These potential substitutes are indeed the ones for which we suggested regulation in our letter.
- 2.3. Regarding the “Seveso derogation”:
  - 2.3.1. Your letter states that “[the Seveso derogation] is based on an assessment that is a more fit-for-purpose approach [than for the large tanks derogation]”. Could you share the arguments on which this opinion is based? We regret that such a comparison is not made in the documents of ECHA’s proposal, and that the latter appear to ignore the work done, knowledge gathered, and recommendations made in the process of the PFHxA restriction. In the EEB’s contribution of 24th May 2022 to the consultation on ECHA’s proposal, section 5, this lack of justification has already been explained. One concrete example of this lack of justification: as compared to the PFHxA restriction proposal, ECHA’s proposal allows use of AFFFs on fuel storage tanks below 400 m<sup>2</sup> (providing they are Seveso sites). It is so far unclear on what arguments ECHA is basing this proposal on.
  - 2.3.2. In the same sentence, your letter suggests that ECHA’s assessment is made fitter-for-purpose by recognising that “PFAS containing foams are challenging to substitute” in large tanks, but also on “sites where multiple types of flammable liquids are used”. In the PFHxA restriction process, stakeholders were asked to provide feedback to consultations. SEAC did not conclude that the latter “challenges” justified a derogation. It is unclear to us on what basis ECHA proposes measures contradicting an earlier SEAC opinion.<sup>3</sup>

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<sup>1</sup> Following ECHA’s wording in the letter, we use “ECHA proposal” to refer to the restriction proposal on PFAS in fire fighting foams, available [here](#).

<sup>2</sup> REACH Art. 73 (1) second paragraph.

<sup>3</sup> It should be noted that RAC did not recommend any derogation for large tanks at all.



2.3.3. Finally, on this topic, the text mentions “as recognised by SEAC in their recommendation in their opinion on the PFHxA proposal to review the proposed five year transitional periods for class B fires prior to its entry into force”. Could you please clarify why this sentence refers to a 5-year transitional period, whereas the preceding sentence referred to the suitability of the large tanks derogation, i.e. a 12-year period? More importantly, please also clarify what passage in the final opinion this statement refers to.

### 3. Thank you very much for building on our table comparing the two restriction proposals:

3.1. Your assumption of an entry into force in 2024 of the ECHA proposal appears indeed realistic, given the currently very fast progress. Our initial assessment, assuming an entry into force, was indeed based on average development times of restrictions.

3.2. Thank you also for clarifying that condition 5(c)<sup>4</sup> of the PFHxA restriction (final opinion) applies also to uses on class B fires by municipal firefighters, on civilian ships and using portable extinguishers.

3.3. ECHA’s comparative assessment appears biased in favour of the foams restriction, by omitting or downplaying points in which the PFHxA restriction is stronger.

3.3.1. Your letter states that “in many instances, the ECHA proposal would result in significant short phase out timelines”. This disregards the fact that the transition periods under the PFHxA scenario are the longer ones proposed by SEAC – whereas the foams restriction may still suffer the same fate. It also overlooks that the reverse is also true for many instances. Especially the uses leading to the highest emissions (according to the ECHA’s Annex XV dossier) are the ones delayed most by the foams restriction proposal. Please see the refined comparative table at the bottom of this document for the specific anticipations and postponements.

3.3.2. Your letter then claims that ECHA’s proposal contains stronger provisions than the PFHxA proposal regarding the use of PFAS-containing foams on fires other than class B fires.<sup>5</sup> While the exact statement in your letter is correct, it disregards the actual provisions of the PFHxA proposal: in the PFHxA restriction, this transition period is three years (SEAC FO) or 1.5 years (RAC or DS), as non-class B uses are covered by condition 3 of the proposal. The phase-out date would consequently be 2026 (SEAC opinion) or 2024 or 2025 (RAC and DS). Under the ECHA’s proposal, this date will be 2024 or 2025 – in other words, both Annex XV dossier proposals are equal. It is only when comparing the SEAC opinion on the PFHxA proposal that the latter can be made to look less good than ECHA’s proposal – for which a SEAC opinion does not exist yet.

3.3.3. Another inconsistent element is the “NA” in your table, regarding the status of Seveso sites under the PFHxA proposal. Indeed, Seveso establishments “without large tanks” are not mentioned explicitly in the PFHxA proposal. This means that condition 5(c) applies to those non-derogated Seveso establishments, i.e. that they must phase out PFAS-containing foams on class B fires within 5 years.

3.3.4. The comparison in your letter on the ‘PFAS management plan’ disregards the relevant counterpart in the PFHxA proposal. Both text proposals are reproduced in the following table (emphasis added).

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<sup>4</sup> This paragraph reads: “[The ban] shall not apply until [after 5 years after entry into force] to concentrated firefighting foam mixtures that are used or are to be used in the production of other firefighting foam mixtures for cases of class B fires”. The wording “foam mixtures used in the production of other foam mixtures” caused us to think that this applied to re-working or blending existing stocks into new mixtures.

<sup>5</sup> Exact wording in the letter: “It is also important to note that the ECHA proposal contains two important provisions that the PFHxA proposal does not. The first is a requirement after six months to only use PFAS containing foams on class B fires (PFAS foams are also used on other types of fires).”

PFHxA proposal	ECHA's proposal
Condition 11	Condition 4(c)
<p>From (<b>entry into force + 36 months</b>), a natural or legal person benefiting from the derogation in paragraph 7(a) shall provide by 31 January of each calendar year a <b>report to the European Chemicals Agency</b> containing:</p> <p>(a) a description of <b>their efforts on substitution</b> of firefighting foams that contain PFHxA, its salts and PFHxA-related substances;</p> <p>(b) quantities they used in the previous year of firefighting foams that contain PFHxA, its salts and PFHxA-related substances per sector specifying:</p> <p>(i) share in training and in operation</p> <p>(ii) whether emission was contained, collected and disposed safely or emitted into the environment.</p> <p>The European Chemicals Agency shall consolidate and forward the data to the Commission by 31 March every year.</p>	<p><b>Six months after entry into force</b> users [...] shall establish a site-specific 'PFAS-containing firefighting foams management plan' which shall include:</p> <p>i. a <b>justification for the use</b> of each firefighting foam concentrate where the concentration of total PFASs is greater than 1 ppm (including an assessment of the technical and economic feasibility of alternatives).</p> <p>ii. details of the conditions of use and disposal of each PFAS containing foam used on site specifying how paragraph 4(b) is achieved (including plans for the containment, treatment and appropriate disposal of liquid and solid wastes arising in the event of foam use, routine cleaning and maintenance of equipment or in the event of accidental leakage/spillage of foam).</p> <p>iii. The management plan shall be reviewed at least annually and be <b>kept available for inspection by enforcement authorities on request</b>.</p>

Whereas the ECHA proposal provision applies to all uses, the PFHxA provision only applies to the large tanks derogation. The report/management plan are relatively similar in content under both proposals. However, most notably the PFHxA proposal fares much better regarding enforceability and transparency. In this case, both ECHA and the Commission will be able to monitor, year by year, efforts made and concrete advances in site conversions. Citizens and NGOs would be able to access this environmentally relevant data. In contrast, the ECHA's proposal's provisions are much weaker: inspectors will only be shown the management plan on request; no information will be available by default to ECHA, the Commission, environmental authorities, citizens or NGOs.

**Appendix II: Comparison table of restriction conditions and transitional periods proposed in the PFHxA and PFAS in firefighting foams restrictions:**

	PFHxA and related substance (DE proposal as modified by RAC/SEAC)		PFASs in firefighting foams (ECHA proposal)		Emissions (t/y) <sup>6</sup>
<b>Entry into force</b>	Assumed 2023 (1 year from opinions sent to COM – Q2 2022)		Assumed 2024 (1 year from opinions sent to COM – Q2 2023)		
<b>Manufacture of substance</b>	EiF+3y	2026 <sup>7</sup>	NA	-	
<b>Formulation of firefighting foams</b>	EiF+5y	2028	EiF+10y	2034	
<b>Reports/ Management plans</b>	EiF+5y	2028 <sup>8</sup>	EiF+6m	2024	
<b>Uses (class B fires only; transitional period 3 years PFHxA and 6 months ECHA proposal)</b>					
<b>Training</b>	EiF+5y (emissions must be minimised)	2028	EiF+1.5y	2026	low
<b>Testing</b>					
<b>Municipal (class B)</b>	EiF+5y	2028	EiF+1.5y	2026	50
<b>Civilian ships (class B)</b>			EiF+3y	2027	50
<b>Portable extinguishers (class B)</b>			EiF+5y	2029	10
<b>Seveso establishments (class B)</b>	EiF+5y	2028	EiF+10y	2034	200
<b>Large tanks</b>	EiF+12y	2035	(they are Seveso establishments)		
<b>Other (incl. defence)</b>	EiF+5y	2028	EiF+5y	2029	>60

<sup>6</sup> Based on ECHA’s proposal, table 2, p. 35.

<sup>7</sup> The shades and intensity of the colour-coding in this table are motivated by the difference in date as well as the overall environmental impact of the use.

<sup>8</sup> The colour-coding in this line is motivated by the weaker monitorability and enforceability of the ECHA proposal, as detailed in section 3.3.4.