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Ms Dorte Hermansen
Head of Division
Danish Ministry of the Environment
Environment Protection Agency
Strandgade 29
DK-1401 Kobenhavn K

Dear Ms Hermansen,

Thank you for your letter of 1 May 2009 regarding the interpretation of Article 7 in Regulation No. 850/2004 on Persistent Organic Pollutants (POP's).

First of all, I would like to clarify the following in connection with Regulation No. 850/2004 (POP Regulation):

Two distinct thresholds for POP content are defined in the POP Regulation:

1. the so-called lower POP content limit (defined in Annex IV) and
2. the so-called upper POP content limit (defined in Annex V).

Depending on the POP content, several possible waste management options are defined for these wastes.

1. In particular, *the lower POP content limit* serves to establish whether a waste is a POP waste or not. It therefore defines the "entry into the POP waste regime" under the Regulation.

2. In addition, *the upper POP concentration limit* serves to establish whether, as an exemption, some alternative waste management options are possible for wastes, provided that it can be demonstrated that the selected operation is environmentally preferable.

The upper and lower limit values for POP's were set based on the results of a study¹ and following the Comitology procedure. *In the particular case of PCB*, a limit value of 50 mg/kg was set both for establishing upper and lower POP content.

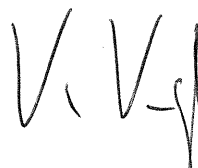
¹ Study to facilitate the implementation of certain waste related provisions of the Regulation on Persistent Organic Pollutants (POPs) (Ref: ENV.A.2/ETU/2004/0044)
http://ec.europa.eu/environment/waste/studies/pdf/pops_waste_full_report.pdf

According to Article 7(4)(a) wastes containing PCB up to 50 mg/kg do not have to be subjected to the treatment requirements described in Article 7(2). In this case, the general waste legislation and in particular the principles laid down in Art. 4 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste regarding the obligation to apply sound waste management practices, are applicable².

As regards landfilling of wastes containing less than 50 mg PCB/kg, the applicable legislation is Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste³ and Council Decision 2003/33/EC of 19 December 2002 establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC⁴

Please note that the above remarks only reflect the opinion of the Commission services and are not legally binding. A finally binding legal interpretation of Community legislation may only be provided by the European Court of Justice. The above remarks are without prejudice to the position the Commission might take should the issue arise in a procedure before the Court of Justice.

Yours sincerely,



Klaus KOEGLER
Head of Unit

² 1. Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular: (a) without risk to water, air or soil, or to plants or animals; (b) without causing a nuisance through noise or odours; (c) without adversely affecting the countryside or places of special interest.

2. Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.

³ OJ L 182, 16.7.1999, p. 1

⁴ OJ L 11, 16.1.2003, p. 27