

A P E R E S E A R C H C O U N C I L

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January 30, 2001

Norwegian Pollution Control Authority (SFT)
Department of Industry, Section for Chemicals and the Chemical Industry
P.O. Box 8100 DEP
NO-0032
Oslo, Norway

Re: Proposed Regulations Concerning Nonylphenol, Octylphenol and Their Ethoxylates

Dear Ms. Kofstad:

On behalf of the Alkylphenols & Ethoxylates Research Council (APERC), I urge Norway to reconsider its proposed ban on the manufacture, import, export, sale and use of nonylphenol, octylphenol and their ethoxylates. Instead, Norway should pursue a more balanced approach to managing these chemicals that will adequately protect human health and the environment, while preserving most of their utility to society.

APERC is a trade association representing producers, formulators, suppliers and users of alkylphenols including nonylphenol, octylphenol and their ethoxylates. We have been following developments related to these chemicals in Europe with great interest, and were dismayed by Norway's precipitous action.

Norway has proposed an almost total ban on a series of versatile and economically important compounds, and many products containing those compounds, that have been in widespread use for 50 years. This is a draconian proposal disproportionate to the environmental issues associated with these chemicals, potentially damaging to an array of important industries, and appears to be out of step with related actions elsewhere in Europe and in North America.

The EU has developed a risk assessment for nonylphenol and nonylphenol ethoxylates. Great Britain, as rapporteur, is in the processing of finalizing a Risk Reduction Strategy. Neither of those documents recommends a comprehensive ban. It is our understanding that Norway is a Contracting Party to the European Area Agreement, and as such has contractual obligations to the EU in matters of chemicals control legislation.

ALKYLPHENOLS & ETHOXYLATES RESEARCH COUNCIL

We are particularly disturbed with what appears to be a disregard of basic principles of cost-benefit analysis that are an essential element of regulation in the United States, the

European Union and elsewhere. The viability of cost-benefit analysis is a universally accepted principle, abundantly documented in the literature of government regulation over a period of many years by scientists, economists and public policy experts.

An example of the credibility of cost-benefit analysis frequently cited is debate related to motor vehicles. Governments could prevent thousands of deaths each year by simply banning use of the internal combustion engine. No nation pursues this obvious course, however, because the cost – economic, social and technological – would be too great. Instead, automobiles and trucks are regulated to minimize problems associated with them while preserving their utility to society.

The same principle applies to regulation of chemicals that may impact human health or the environment. Where the benefits of a chemical or class of chemicals to society are great, and the measurable negative impacts small to nonexistent, sound public policy requires that the preferred response should be sensible management designed to achieve the greatest risk reduction with the smallest possible impact on the economy.

Bans should be considered only under the most extreme circumstances. To our knowledge, there exists international consensus for this approach only for the most egregious persistent organic pollutants (POPs) and ozone depleting substances. Such an extreme approach may be appropriate where there is no viable means available to protect the environment, where it is not feasible to define safe levels, and where compounds cannot be maintained below safe levels because they persist in the environment. However, none of these criteria apply to nonylphenol, octylphenol and their ethoxylates.

To the extent Norway may be approaching this regulatory issue within the context of the “precautionary principle,” we would remind you that Principle 15 of the Rio Declaration, the source of the precautionary principle, requires that there must be “sufficient likelihood” of serious or irreversible damage to health or the environment before the principle is invoked.

We recognize there are some uses of these chemicals that in certain locations, due to inadequate wastewater treatment, can result in environmental releases. However, we fail to appreciate why Norway believes it necessary to apply its ban to products and uses that are economically important and which contribute little or nothing to the environmental burden. For example, an important derivative of NP is tris(nonylphenol)phosphite (TNPP), a secondary oxidant which is used in a variety of processes and products. According to the Risk Reduction Strategy, this use accounts for zero percent of the NP burden, but it would appear to be banned under the rule proposed by Norway. Similarly, an estimated 12% of NPE is used in emulsion polymerization, a process that contributes only 0.002% of the NP burden. NPE also is used as a fuel additive to help vehicles meet emission standards. That use, in conjunction with mineral oil, contributes only 0.008% of the NP burden.

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APERC appreciates the concern of the Norwegian pollution control authority regarding potential implications of these chemicals on the environment and aquatic species. We believe that in most instances NP, OP and their ethoxylates are being safely used. However to assure proper management, APERC is working to develop Environmental Management Programs for different industries that will minimize releases of these chemicals into the environment. We are currently working with Environment Canada to develop a workable protocol for application in textile processing, pulp and paper processing and other industries. You can learn more about this project on our web site (www.aperc.org). We would welcome an opportunity to pursue a similar effort with Norway to achieve a more balanced, scientifically sound and economically viable approach to managing the use of these chemicals.

Our specific concerns with Norway's proposed ban are further described in the attached comments, which we hope you will review and consider in your deliberations. We are ready, willing and eager to work with Norway to develop a more balanced approach to this matter.

Sincerely,

Robert J. Fensterheim
Executive Director