

Mr Lyndon Ashmore, Mr Francis Wragg
Department for Environment, Food & Rural Affairs 2
Marsham Street
London SW1P 4DF

Monday 6th January 2025

Dear Mr Ashmore, Dear Mr Wragg,

The UK Construction Equipment Association (CEA) wishes to make Defra aware of our concerns regarding the significant implications that will result from the recently published statutory instrument covering the Persistent Organic Pollutants (Amendment) Regulations 2024. If the regulation is enforced as published, it will prevent many of our members from placing, on the GB market, new equipment and replacement parts for equipment that is already in service. This will have enormous consequences for a great many UK stakeholders. Our concern relates specifically to the lack of exemptions and derogations in respect of restrictions that are placed on Dechlorane Plus and UV-328 under the UK POPs regulations.

In brief, we ask that Defra:

1. Urgently considers the highly challenging issues that are highlighted in this letter;
2. Prior to the regulation entering into force, publishes a Regulatory Position clearly stating that Defra:
 - a. Intends to amend the 2024 regulation, adding specific exemptions and derogations in respect of Dechlorane Plus and UV-328;
 - b. Will not enforce the 2024 regulation due to it being subject to amendment;
3. Amends the 2024 regulation, aligning the exemptions and derogations for Dechlorane Plus and UV-328 with those granted in the equivalent EU regulation.

The CEA is the trade association that represents the interests of the UK construction equipment industry and has done since 1942. We are recognised by the UK government as the voice of the industry. The CEA represents the £15 billion UK construction equipment sector, employing over 44,000 workers. This is part of the wider £125 billion UK construction sector, employing over 382,500 workers. The UK construction and construction equipment sectors are the backbone of the UK's manufacturing and building economies. UK construction equipment is vital for delivering the UK's built environments. Manufacturers supply many sectors beyond construction, including road building, mining and quarrying, agriculture, infrastructure (rails, airports, ports, and freight terminals), military, forestry, landscaping, utilities, demolition, and recycling.

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For clarification, the CEA is generally supportive of environmental legislation that is of benefit to UK citizens but only on the condition that the legislation is proportionate, practicable, is implemented in a fair manner, and maintains regulatory alignment between the UK and EU. Further, we recognise that the UK POPs regulation is the implementation of the United Nations Stockholm Convention, to which the UK is a party and is therefore bound to transpose the convention, and any amendments thereof, into UK law. The issue we face is not in respect of the principles of the restrictions on Dechlorane Plus and UV-328 but in the manner in which they are being implemented, particularly regarding the lack of exemptions and derogations.

Our membership was greatly alarmed when, only very recently, we learnt of the imminent publication of the Persistent Organic Pollutants (Amendment) Regulations 2024. Through our existing network of contacts in Defra, DBT, DfT and other government departments we are normally made aware of upcoming consultations on proposed legislation that affects our sectors. However, none of our members had been contacted by Defra about this legislative proposal so it came as quite a shock to learn of its imminent implementation. As far as we are aware, no other trade association in the manufacturing sector had any awareness either. The Explanatory Note that accompanies the statutory instrument states *“A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen”*; This is a great pity because if a full impact assessment had been undertaken it would have likely resulted in the manufacturing sector being made aware of the proposal and voicing its concerns at a much earlier juncture.

Upon recently learning of this development, we urgently consulted our member companies to ask what implications will arise as a result of the coming into force of the 2024 UK POPs regulation. Given the necessary short deadline that was set for their response, which spanned the Christmas holidays, and the complex nature of their global supply chains, unfortunately not all were able to respond with data. Additionally, some members’ assessment of the impact of a restriction on Dechlorane Plus and UV-328 became more challenging as previous assessments have been made using the concentration levels set by the amended Stockholm Convention, i.e. 1 mg/kg rather than the 10 mg/kg threshold proposed by the UK regulation, making it more difficult to quickly determine the number of parts or product lines affected and the volume of parts therein. Of those manufacturers that were able to respond, the feedback varied, with some companies, including a number of major global players, saying that 100% of their finished products and 100% of their spare parts would fall within the scope of the restrictions being imposed on Dechlorane Plus and UV-328. Consequently, all the products and all the associated spare parts that some of our member companies produce will be prevented from being placed on the GB market once the regulation enters into force. This will be devastating not only for the companies concerned but also for the customers of those products, who are expecting to receive and use them in a wide range of sectors including, amongst others, the development of infrastructure projects, housebuilding, mineral processing, etc.

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Whilst the GB market remains core to CEA member companies, they also actively sell into the EU market, meaning that their products need to meet the requirements of both EU and UK legislation. We note that the EU legislates POPs through regulation (EU) 2019/1021, which is subject to delegated regulations to amend the scope of substances that it covers. We further note that two delegated regulations that amend (EU) 2019/1021, placing restrictions on Dechlorane Plus and UV-328, will soon be applied. The exemptions and derogations that are included on those delegated regulations closely match the exemptions and derogations that are afforded to the restrictions on Dechlorane Plus and UV-328 in the Stockholm Convention. Unfortunately, we note that many of the exemptions and derogations provided in the EU delegated regulations are not included in the 2024 UK regulation.

To help show the differences between the EU and UK exemptions and derogations, the annex to this letter shows two tables that compare the exemptions and derogations that are provided for Dechlorane Plus and UV-328 in the EU regulation versus those granted in the UK regulation. The red ~~coloured~~ text in the EU column indicates exemptions and derogations that are incorporated in the EU regulation but have not been mirrored in the UK version. As can be seen, there are several significant differences.

The CEA calls upon Defra to amend the Persistent Organic Pollutants (Amendment) Regulations 2024, introducing reasonable exemptions and derogations so that our members can continue to supply their much-needed products to customers whilst, in parallel, phasing out the use of Dechlorane Plus and UV-328 in a realistically achievable timeframe. Specifically, we request that exemptions and derogations are introduced into an amended UK regulation such that they align with the exemptions and derogations that are included in the equivalent EU POPs legislation.

CEA members fully understand the complexity of developing legislation that meets its objectives while remaining fair and balanced. To this end, we are keen to work with Defra in developing an amendment to the 2024 regulations that is fit for purpose and allows a suitable transition period for the implementation of restriction of Dechlorane Plus and UV-328.

Regards,



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Annex – Comparison tables of EU and UK exemptions and derogations

In these tables, the left column shows the exemptions and derogations that are included in the EU regulation, with the right column listing the UK exemptions and derogations. The red text in the EU column indicates an exemption/derogation that is included in the EU regulation but is not included in the UK regulation.

Dechlorane Plus	
EU	UK
<p>1. For the purposes of this entry, Article 4(1), point (b), shall apply to concentrations of dechlorane plus equal to or below 1 mg/kg (0,0001 % by weight) where they are present in substances, mixtures or articles.</p> <p>2. By way of derogation, the placing on the market and use of dechlorane plus shall be allowed for the following purposes:</p> <ul style="list-style-type: none"> a) aerospace, space and defence applications, until 26 February 2030; b) medical imaging applications, until 26 February 2030; c) radiotherapy devices and installations, until 26 February 2030; d) spare parts for any of the following: <ul style="list-style-type: none"> i. land based motor vehicles; ii. marine, garden and forestry machines; iii. aerospace, space and defence applications; iv. medical imaging applications; v. radiotherapy devices and installations. <p>where dechlorane plus was initially used in their production, until the end of their service life or until 31 December 2043, whichever comes earlier.</p> <p>3. The Commission shall assess the need for a prolongation of the specific exemptions in points (a), (b), (c) and (d) at the latest by 1 April 2028.</p> <p>4. Articles containing Dechlorane Plus already in use in the Union before or on the date of expiry of the relevant exemption laid down in paragraph 2(a) to (d) may continue to be used.</p> <p>5. Placing on the market and use of spare parts containing Dechlorane Plus referred to in point (d)(iv) and already produced in the Union or imported before or on 31 December 2043 shall be allowed.</p>	<p>1. For the purposes of this entry, Article 4(1)(b) applies where the concentration of Dechlorane Plus present in a substance, mixture or article is equal to or below 10 mg/kg (0.001% by weight).</p> <p>2. The placing on the market and use of Dechlorane Plus is allowed for replacement parts for, and repair of, land-based motor vehicles where Dechlorane Plus was used in the manufacture of the part being replaced or repaired, until the earlier of—</p> <ul style="list-style-type: none"> i. the end of the service life of the vehicle, and ii. 2044.

UV-328	
EU	UK
<p>1. For the purposes of this entry, Article 4(1), point (b), shall apply to concentrations of UV-328 equal to or below 1 mg/kg (0,0001 % by weight) where they are present in substances, mixtures or articles.</p> <p>2. By way of derogation, the placing on the market of UV-328 present in articles and the use of such articles shall be allowed for the following purposes:</p> <p style="margin-left: 20px;">a) in land-based motor vehicles until 26 February 2030;</p> <p style="margin-left: 20px;">b) in mechanical separators in blood collection tubes, until 26 February 2030;</p> <p style="margin-left: 20px;">c) in triacetyl cellulose film in polarisers, until 26 February 2030;</p> <p style="margin-left: 20px;">d) in photographic paper, until 26 February 2030.</p> <p style="margin-left: 20px;">e) spare parts for any of the following:</p> <p style="margin-left: 40px;">i. land-based motor vehicles;</p> <p style="margin-left: 40px;">ii. stationary industrial machines for use in agriculture, forestry and construction;</p> <p style="margin-left: 40px;">iii. liquid crystal displays in instruments for analysis, measurements, control, monitoring, testing, production and inspection, other than for medical applications.</p> <p style="margin-left: 40px;">where UV-328 was initially used in their production, until the end of their service life or 2044, whichever comes earlier;</p> <p>3. spare parts for any of the following:</p> <p style="margin-left: 20px;">a) liquid crystal displays in devices within the scope of Regulation (EU) 2017/745, and within the scope of Regulation (EU) 2017/746;</p> <p style="margin-left: 20px;">b) liquid crystal displays in instruments for analysis, measurements, control, testing, production and inspection.</p> <p style="margin-left: 40px;">where UV-328 was initially used in their production, until the end of their service life.</p> <p>4. Articles containing UV-328 already in use in the Union before or on the date of expiry of the relevant exemption laid down in paragraph 2(a) to (f) may continue to be used.</p>	<p>1. For the purposes of this entry, Article 4(1)(b) applies where the concentration of UV-328 present in a substance, mixture or article is equal to or below 10 mg/kg (0.001% by weight).</p> <p>2. The manufacturing, placing on the market and use of UV-328 are allowed for the following purposes—</p> <p style="margin-left: 20px;">1. mechanical separators in blood collection tubes, until 26 February 2030;</p> <p style="margin-left: 20px;">2. replacement parts for land-based motor vehicles where UV-328 was used in the manufacture of the part being replaced, until the earlier of—</p> <p style="margin-left: 40px;">1. the end of the service life of the vehicle, and</p> <p style="margin-left: 40px;">2. 2044.”</p>