|  |  |
| --- | --- |
| To Mr. Baskut Tuncak  *Special Rapporteur on human rights and hazardous substances and wastes*  Sustainable Human Development Branch  UNOG-OHCHR  Palais des Nations  1211  E-mail: srtoxicwaste@ohchr.org | Danish EPA Chemicals  J.nr.  Ref. momwe  March 4 2015 |

Dear Baskut Tuncak

Please find attached the Danish response to the questions in your letter of 4 February 2015. We hope you find the information useful. We agree to the response being made available for public access.

In addition to our answers to your questions, we would like to convey the following general information on competencies regarding chemicals and wastes: The governmental responsibility for chemicals, including pesticides and biocides, as well as waste, lies predominantly with the Environmental Protection Agency (EPA) of the Ministry of the Environment. The EPA is tasked with policy formulation and regulation and partly with enforcement. The EPA also undertakes and supports knowledge building, information and awareness raising. Other authorities are in charge of related regulation and responsibilities, and regularly coordinate and work closely with the EPA, especially the Danish Working Environment Authority (in charge of the working environment), the Danish Health and Medicines Authority (in charge of recommendations concerning health) and the Danish Veterinary and Food Administration (in charge of food safety). Furthermore, the EPA has a special enforcement unit, the Chemical Inspection Service, which also cooperates with other authorities in relation to enforcement, such as the Danish Safety Technology Authority, the police, the custom authorities and the municipalities. Yearly reports on results of its undertakings in relation to compliance, control and campaign activities are available on the EPA website. Information in English is available at <http://eng.mst.dk/topics/chemicals/the-chemical-inspection-service/>.

Enforcement and control on shipments of waste is the responsibility of the Soil & Waste Unit at the EPA in cooperation with the police, the custom authorities and the municipalities.

The main part of chemicals and waste regulation applicable in Denmark has been decided under the auspices of the European Union, including for instance the REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) and CLP (Classification, labelling and Packaging of chemicals) regulations, Waste Framework Directive, Waste Shipment Regulation, biocides and pesticides regulation and POP Regulation. There is also product specific regulation, for example on cosmetics, toys, and hazardous substances in electrical and electronic equipment (RoHS Directive), and legislation on specific chemicals. To improve implementation and compliance with REACH and CLP, the EPA has established national help disks for business and authorities, accessible via the EPA website.

Denmark has a long history of active participation in global regulation and frameworks regarding the regulation and sound management of chemicals and wastes. Denmark is actively involved in SAICM and is a party to the Basel, Rotterdam and Stockholm Conventions, and is presently preparing ratification of the Hong Kong and Minamata Conventions. And of course the Aarhus UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was proposed by, and agreed in, Denmark.

Information on chemicals and waste can be found on the EPA website ([www.mst.dk](http://www.mst.dk)), where the information is quite comprehensive and available to everybody. It is organized to facilitate search for different types of information relevant for different groups and in various situations, especially enterprises and the business community vs. citizens/the general public. Information on specific topics in English is available at <http://eng.mst.dk/topics>. Information on the present policy priorities in English, *Chemicals Initiatives 2014-17*, can be found at <http://kemikalieindsatsen.dk/english>. Information on the present policy priorities regarding waste can be found at <http://eng.mst.dk/topics/waste/>

Various relevant reports and other publications in English can be found at <http://mst.dk/service/publikationer/engelske-publikationer/>.

Yours sincerely

Mona Mejsen Westergaard

Direct tel: +45 72 54 43 56

momwe@mst.dk

**Annex**

**Submission by Denmark**

**Response to the letter of the UN Special Rapporteur on human rights and hazardous substances and wastes of 4 February 2015 regarding the right of access to information with respect to hazardous substances and wastes.**

**Question 1. Obligations of the Government to ensure the right to access to information under international, regional and national laws**

The overall Danish regulation on access to information in the public administration is the Danish Public Information Act (*Lov om offentlighed i forvaltningen*, also called *Offentlighedsloven*).

The Environmental Information Act supplements the act on Access to Public Administration Files with regard to information on the environment. The Environmental Information Act implements both the EU Directive 2003/4 on public access to environmental information and the 1st pillar of the UNECE Aarhus Convention.

Environmental information has a very wide scope and information on hazardous substances and waste is included. The Environmental Information Act stipulates that everyone is entitled to the rights consequential upon the Act. If a request for information has been refused, the following mechanism is in place:

Anyone with an individual legal interest can bring an action before the courts.

According to the Environmental Information Act, a decision regarding access to information can be appealed to the appellate body for the case in which the request for access to information relates. Refusal of a request for access to information that is notified by a body which is covered by the Environmental Information Act, but which is not part of the ordinary public administration, can be appealed to the Environmental Board of Appeal.

The right of appeal is supplemented by the non-statutory administrative law principle of resumption. It is also possible to bring a case before the Ombudsman of the Danish Parliament and the authorities responsible for the supervision of municipalities.

**Questions 2 and 3. Scope and characteristics of hazardous substances and waste related information accessible to the public, and how information is made available to the general public and tailored to different constituencies**

A wide range of information is available to the public on the EPA website, including on regulation in force, government policy, statistics, various research and reports commissioned by the Environmental Protection Agency and information campaigns. It includes useful information for the private sector as well as the general public. The website also has sections on news and on hearings and cases in relation to the environment. It further has a selection of “green tips” for consumers, especially on chemicals in products, and also has information specifically targeting students, which includes information on chemicals and waste.

There is substantial statistics on waste. A report is published on a yearly basis which is accessible via the website, and where withdrawal of data can be tailored: <http://mst.dk/virksomhed-myndighed/affald/tal-for-affald>. There is also yearly statistics on pesticide and biocide use (bekæmpelsesmiddelstatistik). The most recent report, in Danish, is available at <http://www2.mst.dk/Udgiv/publikationer/2014/12/978-87-93283-33-6.pdf>.

The EPA has developed the *List of undesirable substances* (LOUS) (first list in 1998, fourth and latest in 2009), which is publicly available on the EPA website. This is not a list on regulation, but mainly a signal list to companies as to which substances they could look into for substitution.

Finally, the Ministry has a central dedicated information unit, located within the EPA, which can be contacted by e-mail and telephone for information relating to the environment, <http://mim.dk/ministeriet/kontakt/informationscenter>.

Information on more specific issues and actual information campaigns are regularly undertaken. Much of the information and awareness raising, especially information campaigns, have been directed towards vulnerable populations such as children, youth and pregnant women.

Decision on the specific topics are based on criteria such as assessment of the exposure and risk to the population; whether there is new knowledge regarding risks to the general public or to vulnerable groups; assessment on whether there is a need for information to prevent or minimize releases and human exposure, and on political priorities. The most comprehensive campaigns are usually agreed by unanimity or a wide majority of the political parties in Parliament.

Information is often undertaken together with other relevant national authorities and can take several forms, including film/TV spots, pamphlets, happenings, (social media) and material for school teaching.

Outside the ministry there is a national poison hotline, located at a major hospital in Copenhagen, “Giftlinjen”, which informs on chemicals in relation to poisonings and mainly household/domestic accidents involving chemicals. It also has a website, with information on how to manage chemicals in homes in order to avoid accidents. Its website is <http://www.bispebjerghospital.dk/giftlinjen/forside/>.

Regarding the explicit link between chemicals and waste and human rights:

We have not traditionally directly tied policy and efforts on hazardous chemicals and wastes to human rights. However, this could be said to have been implicit, since policy in the area has generally had a clear focus on protection of health just as much as on the environment. This has been enhanced over the years, with new knowledge pointing to risks from endocrine disrupting chemicals and combination effects, and to the scientific indications of a connection between chemicals and fertility itself, and also with increased focus on health effects related to international shipments of waste and its disposal in developing countries.

**Question 4. Examples of how information has been used**

Information has long been used to inform on hazardous substances in order to prevent or minimize health effects, especially by informing on products and product types containing chemicals, in relation to use as well as disposal. Often other authorities and/or stakeholders have been involved in the design and activities under the initiatives.

Denmark has over the years funded several “knowledge centres” which typically have as a part of their work to conduct research, produce reports and other information. Present centres include the National Allergy Research Centre and the Centre on Endocrine Disruptors. Other initiatives to increase awareness and knowledge about chemicals, their sound management and their effects on health, include dialogue meetings, a yearly conference “Kemikaliedagen (the chemicals day), and a “chemicals forum” (Kemikalieforum) with a wide range of stakeholders including consumer organisations.

Recently, a project “Tænk kemi” (think chemistry) has been launched to help people avoid harmful chemicals, where the work of Forbrugerrådet (the consumers council) is funded in undertaking testing, advice and publishing articles about chemicals in products.

Two reports on the state of the environment are published every 4 years, *Miljøtilstandsrapporten* and *Natur- og Miljøpolitisk Redegørelse,* which include chemicals and waste. The most recent versions are in the final stage of preparation and will soon be published.

The EPA is now also on Facebook, where there are links to information campaigns, including on chemicals and waste. The general page is: <https://da-dk.facebook.com/Miljoestyrelsen>, and our dedicated page on chemicals is: <https://www.facebook.com/Hverdagskemi?fref=ts>.

Examples of specific campaigns include:

* Information on rules for work with repair, maintenance and removal of asbestos and asbestos containing materials still in use (use of asbestos has long been banned) especially in buildings, and on measures to prevent cancers in undertaking work with asbestos containing materials (Danish Working Environment Authority, July 2005: At-vejledning C.2.2)
* The campaign “Skin allergy – a partner for life” Information on skin allergy caused by perfume in various products like deodorants and creams, by hair colour and temporary black henna tattoos, focusing on girls ages 13-16 (EPA 2008 and 2011).
* Campaign on 2-year olds and their combined exposure to problematic chemicals, and how the reduce their exposure to /risk from exposure to chemicals (EPA 2009)
* A PCB guide and a hotline to guide citizens, municipalities and private enterprises on how to handle PCB in buildings (EPA 2011)

Recent campaigns and initiatives

* The information campaign on pregnancy and chemicals, on how to avoid substances that may have negative effects on the fetus, including i.a. chemicals from different types of products (Kend kemien)(EPA 2014-15).
* Application for smartphones, which makes it easy to contact retailers in relation to information on content of substances of very high concern contained in a variety of products. Retailers are obliged to inform on such substances, if requested, as regards substances on the EU candidate list for specifically harmful chemicals, if they constituting more than 0,1 % (EPA 2014).
* Information to business sectors on regulation covering chemical in toys and textiles for children (EPA 2014)
* Information campaign on fertility, including teaching material for adolescents/high school students, which includes information on chemicals (EPA et al. 2015)
* Information on energy saving compact fluorescent lamps/light bulbs containing mercury - how to act in case of breakage and release of mercury and on disposal, and advise to switch to LED lamps (EPA et al. 2015)
* Campaign ”Grønnere gør-det-selv” (greener do-it- yourself), on how to avoid harmful substances when you buy, use and dispose of relevant products and building materials, including paints, PVC, wood protection products and more (EPA 2014-15).

Upcoming initiatives

* Information to business sectors on regulation covering the electronics and cosmetics business sectors (EPA 2015).

**Question 5. Which businesses are required to provide information on hazardous substances and wastes**

Please see answer from the European Commission in relation to EU-legislation. Information is provided to Eurostat.

**Question 6. Limitations to the right of access to information**

According to the Aarhus Convention a request for environmental information can in some situations be refused. Article 4, para 3 and 4 of the convention contain optional grounds for refusing disclosure. Denmark has implemented the majority of these. The relevant public authority makes the decision on disclosure/non-disclosure.

**Question 7. The right of access to information vs. respecting confidentiality**

In Denmark a request for environmental information can be refused if the disclosure would lead to significant financial damage of a company. There has to be a causal connection between the disclosure of the information and the risk that the company will suffer financial damage. Examples of information, that could harm a company economically is technical designs or approaches, operational or business conditions, lists of customers, business strategies and the company's accounts.

Since this is an exception to the general rule that information must be provided upon request to members of the public, Danish authorities are obliged to use the following balancing test in every particular case: Firstly, the grounds for refusal shall be interpreted in a restrictive way, taking into account public interest in disclosure. Secondly, the public interest served by disclosure shall be weighed against the interest served by the refusal. Disclosure can only be refused, if the interest served by that outweighs the interest served by disclosure.

If the request concerns information on emissions to the surrounding areas they have to be disclosed, notwithstanding that it would affect the company's financial situation. Requests for information on emissions to the surrounding area can be refused though - if it concerns intellectual property and disclosure will lead to significant financial damage of the company.

Before making a decision, the relevant Danish public authority assesses whether there is a need to consult the company to hear their view on whether disclosure of the information could lead to significant financial damage. It could also be necessary to consult with other public authorities who have an interest in the concrete case. In case the company is regulated by the EU Seveso-directive, the police will be consulted to help assess whether the requested information also could harm the security of the state. The consulted parties will only be given a very short time limit to respond in order to meet our response deadline towards the applicant.

Statements from the companies are not binding upon the authorities. The applicant will be consulted about the companies view. When the decision is final, a copy is send to all those who have been consulted.

In the majority of cases that the Danish Environmental Protection Agency assessed in 2014 regarding this exemption, the applicant received partly access to the requested information. The following type of information was not disclosed, unless it was already publicly available or commonly known:

* Information on suppliers, customers and business associates,
* Information on processes, and operational conditions
* Lists of customers.

The reason has been that the information could harm the company's competitiveness and did not include information on emissions.

In one case, information on a company's reports of waste from gypsum was disclosed because it was not precise enough to damage the company’s competitiveness on the market.

In another case the applicant wanted access to a winning procurement. All information was disclosed except for detailed information on the budget and the analysis model. It was assessed that full disclosure could harm the competitiveness of the market significantly.

In one case all information was disclosed, including a list on public authorities and institutions that receive products from the company, as well as information on the company's handling and labelling of chemicals.