

First draft

Analysis to identify information in Annex F that cannot be considered confidential

Paragraph 5 of Article 9 of the Stockholm Convention states that "information on health and safety of humans and the environment shall not be regarded as confidential," and that the "Parties that exchange other information pursuant to this Convention shall protect any confidential information as mutually agreed."

At its first meeting, the Conference of the Parties of the Convention adopted decision SC-1/7, establishing the Persistent Organic Pollutants Review Committee. According to paragraph 19 of the Annex to decision SC-1/7, "The Committee shall establish confidentiality arrangements as a matter of priority. In handling confidential information and in establishing such arrangements, the Committee shall ensure that paragraph 5 of Article 9 of the Convention is respected."

Consequently, during its first meeting, the Committee adopted decision POPRC-1/1 on provisional confidentiality arrangements. This decision:

- "...
1. Requests the Secretariat to develop draft confidentiality arrangements for consideration by the Committee at its next meeting;
 2. Decides to apply the following provisional arrangements to confidential information until final arrangements are established by the Committee:

(a) Any Party or any observer, when submitting information to the Committee, through the Secretariat, may identify and clearly label specific items of information submitted as confidential and requiring application of the provisional procedures for treatment of confidential information;

(b) When receiving information labelled as confidential, the Secretariat or the Committee shall consider with the Party or the observer referred to in paragraph 2 (a) above the need for such labelling and mutually agree on the applicability of the provisional confidentiality arrangements to the information item in question.

(c) Information on health and safety of humans and the environment is not considered/deemed confidential pursuant to Article 9, para 5, and includes:

(i) Information submitted pursuant to paragraphs (b)–(g) of Annex E to the Convention;

(ii) Information submitted of the types described in paragraphs b(iv), c(i), and c(ii) of pursuant to Annex F to the Convention;];

(d) Information that will not be given confidential treatment for the purposes of the work of the Committee [because it is not generally considered confidential information] includes:

(i) Information which is otherwise publicly available;

(ii) Information which cannot be labelled as confidential according to the domestic legislation of the State or regional economic integration organization of the origin of the information;

(iii) Information submitted of the types described in paragraphs (e), (f), and (g) of Annex F to the Convention;

..."

Having analyzed decision POPRC-1/1 (and its Annexes I and II contained in the POPRC-1 meeting report), and the nature of information requested in Annex F to the Convention, the Working Group on Annex F and Confidentiality recommends the Committee to delete brackets on Paragraph c (ii), under Number 2 of decision POPRC-1/1 and make the changes indicated above. Consequently, if this recommendation is adopted, none of the information in Annex F should be considered as confidential.

The rationale for this recommendation is that not all of the information items requested under Annex F represent information on health and safety of humans and the environment. Note: The U.S. disagrees with the general assessment that "all information items requested under Annex F" represent "information on health and safety of humans and the environment" for purposes of Paragraph 5 of Article 9. We would therefore disagree with the

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Comment [US1]: U.S. experience with the term "health and safety study" and practical experience in implementing U.S. regulations governing confidential information lead the U.S. to disagree with the general assessment that "all information items requested under Annex F" represent "information on health and safety of humans and the environment" for purposes of Paragraph 5 of Article 9. We would therefore disagree with the underlying basis for the position that all Annex F information shall not be deemed not confidential.

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underlying basis for the position that all Annex F information shall not be deemed not confidential. Further, recognizing the costs and complexities of handling confidential business information, discouraging the submission of information otherwise eligible for treatment as confidential information may have the concurrent, undesirable effect of discouraging the submission of information critical to the work of the POPRC and therefore the COP. We do believe that information of the types described in paragraphs b(iv), c(i), c(iii), (e), (f), and (g) of the Convention should not be deemed confidential for purposes of the work of the Committee