

REACH and Substances Recovered from Waste

Summary

- REACH applies to recovered waste once it ceases to be waste;
- Recovery businesses are considered to be manufacturers under REACH, so may have registration obligations, unless certain exemptions apply;
- Where any recovered substances qualify as “phase-in” substances (e.g. they are listed in EINECS), they are eligible for the phased registration deadlines available in REACH. Companies must pre-register their substances to use the phased registration deadlines. Pre-registration is now open only to companies who are recovering a substance at 1 tonne or more per annum for the first time after 1st December 2008. Those companies undertaking recovery operations before 1 December 2008 should have already pre-registered.
- It is important to think about how to (pre-)register recovered materials consisting of two or more substances – either as a single variable composition (UVCB) substance or as individual substances within a preparation (mixture);
- There are some exemptions from registration obligations within REACH which could apply to recovered substances;
- Compost, biogas and anaerobic condensate are exempt from registration under Annex V of REACH.

Introduction

This advice on the REACH requirements for recovered waste substances is subject to final guidance being published by the European Chemicals Agency (ECHA). It is based on the latest available information, and is intended to help businesses involved in waste recovery to understand the possible obligations placed on them by the REACH Regulation.

It is important to note that waste itself, as defined by the Waste Framework Directive (2006/12/EC), is specifically excluded from REACH by not being classified as a substance, preparation, or article (Article 2(2) of the REACH Regulation). Therefore, the REACH requirements for substances, preparations, and articles – such as registration, authorisation, and communication of information along the supply chain - do not apply to waste. There is a requirement in REACH for the manufacturers and importers of substances in quantities of 10 tonnes or more per annum, to prepare a Chemical Safety Report. These must include exposure scenarios based on declared uses of the substances, which also take account of hazards present in the waste stage and make recommendations on appropriate risk management measures. For the avoidance of doubt, this does not mean that REACH has any jurisdiction within the waste stage, but that REACH provides hazard information which can be used when waste is being handled.

However, where waste is recovered back into substances that are placed on the market for further commercial use, REACH applies, as it does to any other substance placed on the market, from the point a recovered substance ceases to be waste and waste management controls no longer apply. The point at which waste ceases to be waste is a matter for waste legislation, and REACH does not have any bearing on that. You should check with your local regulatory authority responsible for waste if you are unsure of your specific situation.

Manufacturer or not?

Just because your recovery operations may not be classed as manufacturing under waste or other legislation, you should not assume that you will not be classed as a manufacturer under REACH. In fact, the REACH definition of manufacturer is taken to include those producing recovered substances

REACH and Substances Recovered from Waste

for placing back on the market, meaning that all such businesses may have the obligations of manufacturers. This does not conflict with the definition of manufacturer in other legislation, since it concerns only the functions set out by REACH. So for example, Pollution Prevention and Control legislation makes a distinction between chemical recovery and chemical manufacture – i.e. chemical recovery is not considered manufacturing under that regime. However, since REACH applies only once waste ceases to be waste, and it is placed back on the market, REACH takes a different view of what a manufacturer is for the purpose of controls in the post-waste situation, without compromising the definition or situation under other legislation.

REACH Obligations

As with any other non-waste manufacturer or importer, the REACH obligations on waste recovery businesses may vary. The main obligation under REACH is to register substances. This duty can be deferred until a later date if a substance is pre-registered (see later). For a company to register substances, it must be a legal entity established in the Community. Non-EU-based companies cannot (pre-)register substances, but their EU-based subsidiaries or branches can. It is also important to remember that each individual legal entity of a business or company has to submit a (pre-)registration – a single submission by one company or a trade association on behalf of everyone dealing with a substance cannot be made. As the initial pre-registration period ended on 1st December 2008, pre-registration is now only available under in certain circumstances (see below).

Pre-registration

The initial pre-registration period for those companies that were recovering substances before 1 December 2008 ran from 1 June 2008 to 1 December 2008. Pre-registration remains an option only for companies who produce a substance at 1 tonne or more for the first time after 1 December 2008.

In general, substances eligible for pre-registration are those that are listed on the European Inventory of Existing Commercial Chemical Substances (EINECS) – so-called “phase-in” substances. For recovery businesses that are returning such substances to the market, this is important as it may mean that your substances are eligible for an exemption from registration under Article 2(7)(d) of the REACH Regulation, as long as the substance has previously been registered by someone else (doesn't have to be in the same supply chain). However, until these substances have been registered, a pre-registration will be needed to be able to continue recovering and placing them back on the market after 1 December 2008 without the need for immediate registration.

You will need to decide how you are going to classify the substance(s) you recover (and should therefore (pre-)register). There are three possible options:

- As a single well-defined substance, e.g. recovered solvents (toluene, ethanol, etc) or single metals (copper, lead).
- As a preparation consisting of a mixture of various well-defined substances, each of which has to be identified and separately registered if appropriate (N.B. preparations themselves are not registered, only their constituent substances).
- As a UVCB substance (unknown or variable composition, complex reaction products, or biological materials), where the waste streams used may be variable.

It should be remembered that impurities do not require separate registration if they are not intended to be present in the final preparation (despite being present in the waste stream), **and** are present at less than 20%.

REACH and Substances Recovered from Waste

Pre-registration is free, and a simple process involving the electronic transmission of some basic data to the European Chemicals Agency. Further information is available in [UK REACH CA Information Leaflet Number 7 – Pre-registration](#).

REACH Exemptions

Provision is made in REACH for exemptions from some or all of its requirements, under certain conditions. These are possible because either regulatory regimes in other legislation are considered to be equivalent to REACH in terms of substance information provision and controls, or certain substances or categories of substances are already known to pose little or no risk to health or the environment, or their registration is not considered appropriate (e.g. because they are naturally occurring). More information on exemptions generally is available in [UK REACH CA Information Leaflet Number 8 – Exemptions](#).

For recovered substances, three REACH exemptions are most likely to be possible:

Specific substance exemption under Annex IV, because sufficient information is known to be sure that it presents little or no risk to human health or the environment;

General categories of substances under Annex V, for which registration is deemed unnecessary or inappropriate, and their exemption does not compromise the objectives of REACH; or

An exemption under Article 2(7)(d) of REACH, if the recovered substance is the same as its virgin equivalent that has been previously registered (not necessarily in the same supply chain).

Compost, biogas, and anaerobic digestate

Annex V of REACH includes compost and biogas as a specific category of exemption in the legal text. Revised [draft guidance on Annex V](#) has been published by the European Commission, and clarifies that anaerobic digestate is also exempt. This revised guidance is expected to be adopted by ECHA shortly. Registration obligations do not therefore apply to compost, biogas, and anaerobic digestate.

Commission draft guidance on recovered waste substances

The European Commission has published [draft guidance on REACH and recovered waste substances](#). This explains in more detail how REACH applies to substances recovered from waste, and in particular proposes that certain recovered aggregates should be classified as articles for the purposes of REACH, which would remove the obligation for registration. The UK supports the Commission's guidance, and has urged ECHA to make an early decision on its adoption to remove uncertainty within the industry.

Further information

For advice on the application of REACH obligations, you can contact the UK REACH Competent Authority's national helpdesk:

Email: UKREACHCA@hse.gsi.gov.uk

Website: www.hse.gov.uk/reach

