

Health and Safety Executive Board		Paper No: HSE/11/53	
Meeting Date:		FOI Status:	
Type of paper:	Below the line	Exemptions:	
Trim reference:	2011/413898		
REACH restriction on paint-strippers containing dichloromethane: arrangements for a derogation			

Purpose of the paper

1. To update the Board on arrangements for a UK derogation from the new restriction on the sale/use of paint-strippers containing dichloromethane (DCM) which has been made under the EU Registration, Evaluation, Authorisation and restriction of Chemicals Regulation (REACH).

Background

2. The European Commission have amended Annex XVII of REACH, placing a ban on paint-strippers containing DCM being supplied to, or used by, the general public or professionals. An extract of the restriction text is included at annex 1.
3. Such paint strippers can continue to be used in industrial installations, provided certain workplace safety conditions (such as effective exhaust ventilation, respiratory protective equipment, enclosed strip tanks and appropriate gloves) are met. This provision does not require Member States to make separate domestic arrangements, as it is written into the Regulation text itself.
4. DCM is a colourless, volatile liquid and very effective solvent. It evaporates easily, which can result in high concentrations of vapour, particularly in confined spaces or where ventilation is inadequate. Breathing in DCM vapour can produce narcotic effects, including drowsiness, headache, giddiness and, at high concentrations, unconsciousness and death. Skin and eye exposure can produce severe irritation. DCM has also been classified as a Category 3 carcinogen. Statistics relating to harm caused by DCM-based paint-strippers are included at annex 2.

Argument

5. DCM is a hazardous substance, and appropriate precautions should be taken where paint strippers containing it are used. However, while there are risks associated with use of DCM-based paint-strippers, they can be used safely provided workers receive proper training and appropriate precautions are taken.
6. DCM-based paint-strippers are particularly effective at removing very durable coatings – including leaded paint – quickly and without damaging the substrate, and are also effective in removing graffiti.
7. Leaded paint was in very widespread use throughout the UK before durable alternatives were found during the 1960s – as a result, almost any painted surfaces on buildings and many other objects predating the 1970's may contain lead. Lead in paint is consequently an issue wherever old layers of paint may need to be removed, both for domestic and professional renovation and importantly in heritage applications such as the renovation and maintenance of

historic buildings, structures, or other objects. Removal of leaded paint via paint-stripper as opposed to heat treatment or dry scraping/sanding offers protection of human health (there is less dust and/or fume).

8. DCM paint-strippers are generally considered by conservators to be more protective of the substrate material than alternatives, and so are important in applications such as the restoration and maintenance of heritage buildings and machinery, antique restoration, etc., as well as in graffiti removal.
9. Because it can be used safely and reflecting the importance of DCM in paint-stripping, during negotiation of the restriction text HSE on behalf of the UK successfully secured a conditional derogation. This can be used by Member States to permit paint-strippers containing DCM to be supplied to (and used by) professionals who have received specific, appropriate training in order that they be competent in the safe use of these mixtures. In order to continue using DCM-based paint-strippers, users must both be trained and must in practice be applying appropriate risk control measures.
10. REACH has direct effect in the UK. Therefore, domestic legislation is not required to implement this restriction on paint-strippers containing DCM. However, legislation would be necessary to give effect to the derogation, which would need to be achieved by amending the REACH Enforcement Regulations 2008. While these Regulations are owned by the Department for Environment, Food and Rural Affairs (Defra) who lead on UK REACH policy, the DCM restriction is principally related to worker health and so Defra have asked HSE to lead. HSE is therefore leading on developing the policy line, assessing impacts and drafting the necessary statutory amendment, which will be signed by a Defra Minister as an amendment to Defra-owned Regulations.
11. The first restriction date for DCM paint-strippers was 6th December 2010. Formulators of paint-strippers containing DCM have not been permitted to put their products into the supply chain since that date. Retailers in possession of these products can, however, continue to sell them to the general public or to professionals for a further year, until 6 December 2011. Without making use of the derogation, the final date on which professionals may use paint-strippers containing DCM is 6th June 2012.
12. Making use of the derogation would secure continued access to the market for UK industry, and being of benefit to UK business can be considered an 'out' under 'One In, One Out'. Conversely, the latest guidance on 'One in, One out' states that EU measures will not be considered an 'in' except in the case of creating additional burdens or a failure to derogate - failing to take up this derogation opportunity could therefore be counted as an 'in', either for HSE or for Defra.
13. We intend to take up the derogation in EU requirements as we consider that the derogation requirements, alongside the continued application of the Control of Substances Hazardous to Health (COSHH) Regulations and other chemicals law, are sufficiently protective of worker health that the continued use of DCM-based paint-strippers by trained and competent professionals should be permitted.
14. Interested stakeholders throughout the UK heritage, chemicals, construction and manufacturing sectors have been alerted to this restriction, including the time pressures, and the intention to arrange for a derogation.

Training scheme

15. The opportunity to allow continued use of DCM-based paint-strippers does not apply to consumer use. Under the restriction, use can continue in industrial installations under certain circumstances, and can further be permitted by 'specifically trained professionals' only.
16. HSE's objective is to ensure that those using DCM-based paint strippers in future are competent to do so, including that they understand the risks and are aware of the precautions needed.
17. The COSHH Regulations already require that employers assess risks associated with use of hazardous substances at work and take appropriate precautions. In the case of DCM-based paint-strippers these precautions would normally involve considering alternatives, providing appropriate training and information, and use of PPE and ventilation systems depending on the conditions under which such mixtures are used. However, because the restriction text specifies that professionals benefiting from the derogation must be 'specifically trained', unless such COSHH training can be demonstrated to have specifically covered DCM, further 'specific' training will be necessary.

The scope of the derogation

18. We need to take the broadest reasonable interpretation of the possible scope for derogating from regulatory requirements, to avoid unnecessary burdens on business. It would not be appropriate, for example, to require all painter-decorator or other construction workers to be specifically trained in the use of DCM-based paint-strippers; paint-stripping might not be a feature of an individual worker's tasks, or use of alternatives to DCM-based paint-strippers can obviate the need for such training.
19. Further, while the restriction text does require that specifically trained professionals should be able to demonstrate proper training and competence, the conditions placed on the derogation do not require that training schemes be formally accredited by Member State authorities. The restriction text itself sets out the minimum requirements for training, and there is no need to duplicate these in domestic law.
20. Our aim is therefore to provide for the continued use of DCM-based paint-strippers by establishing a statutory basis for the derogation in the UK, but making training a requirement only for those who continue to use such mixtures. We do not intend to establish a formal accreditation scheme beyond the minimum requirements already set out in the REACH restriction text itself (Annex 1, paragraphs 2 and 3), which are legally binding.
21. HSE is therefore working with industry to support them in developing an appropriate training and competence scheme so that those who wish to continue to use DCM-based paint-strippers in a professional capacity under the derogation can be properly trained.
22. Formulators of DCM-based paint-strippers are considering how best to establish and manage a training scheme. The European Chlorinated Solvents Association (ECSA), which represents DCM manufacturers, have indicated they are able to

support industry in developing the necessary syllabus and making this available at the European level. A benefit of this would be that other Member States taking advantage of the derogation can work to common methods and standards.

Regulatory Change

23. Whilst HSE would prefer for implementation of EU law to be achieved by direct 'copy out' of EU provisions, taking up this derogation cannot be achieved by copying out the EU provisions, as the wording given there is not appropriate.
24. HSE have instead agreed with the Better Regulation Executive that we can best implement the 'copy out' policy here by taking up the available derogation as fully as possible and using only the fewest words consistent with being legally clear and robust, to minimise the risk of inadvertent gold-plating and also for the sake of minimal regulatory change.
25. In order to make a final recommendation to Ministers regarding this derogation, officials will need to prepare a consultation document, accompanied by an impact assessment. Consultation and implementation materials will require clearance through the Board and subsequently Government procedures including the Regulatory Policy Committee and the Reducing Regulation Committee. An implementation timeline is provided at Annex 3.

Action

26. The Board is asked to note:
 - a. that the training which users will need to undergo will be organised by industry and will not be accredited by HSE, but must be demonstrably in line with the minimum requirements set out in REACH;
 - b. the intention, subject to opinions from the Board, our sponsor Minister, the Regulatory Policy Committee, and the Reducing Regulation Committee, to carry forward this regulatory amendment in partnership with Defra, including developing an impact assessment and consultation for publication in autumn 2011;and to agree:
 - c. that subject to Board agreement of the policy approach set out in this paper, the Chair should clear the consultative document and associated paperwork on behalf of the Board to enable timely implementation.

Paper clearance

27. Jane Willis, Director Cross-Cutting Interventions Directorate

Annex 1: REACH Annex XVII, entry 59, dichloromethane

1. Paint strippers containing dichloromethane in a concentration equal to or greater than 0,1 % by weight shall not be:

(a) placed on the market for the first time for supply to the general public or to professionals after 6 December 2010;

(b) placed on the market for supply to the general public or to professionals after 6 December 2011;

(c) used by professionals after 6 June 2012.

For the purposes of this entry:

(i) "professional" means any natural or legal person, including workers and self-employed workers undertaking paint stripping in the course of their professional activity outside an industrial installation;

(ii) "industrial installation" means a facility used for paint stripping activities.

2. By way of derogation from paragraph 1, Member States may allow on their territories and for certain activities the use, by specifically trained professionals, of paint strippers containing dichloromethane and may allow the placing on the market of such paint strippers for supply to those professionals.

Member States making use of this derogation shall define appropriate provisions for the protection of the health and safety of those professionals using paint strippers containing dichloromethane and shall inform the Commission thereof.

Those provisions shall include a requirement that a professional shall hold a certificate that is accepted by the Member State in which that professional operates, or provide other documentary evidence to that effect, or be otherwise approved by that Member State, so as to demonstrate proper training and competence to safely use paint strippers containing dichloromethane.

The Commission shall prepare a list of the Member States which have made use of the derogation in this paragraph and make it publicly available over the Internet.

3. A professional benefiting from the derogation referred to in paragraph 2 shall operate only in Member States which have made use of that derogation. The training referred to in paragraph 2 shall cover as a minimum:

(a) awareness, evaluation and management of risks to health, including information on existing substitutes or processes, which under their conditions of use are less hazardous to the health and safety of workers;

(b) use of adequate ventilation;

(c) use of appropriate personal protective equipment that complies with Directive 89/686/EEC.

Employers and self-employed workers shall preferably replace dichloromethane with a chemical agent or process which, under its conditions of use, presents no risk, or a lower risk, to the health and safety of workers.

Professional (sic) shall apply all relevant safety measures in practice, including the use of personal protective equipment.

4. Without prejudice to other Community legislation on worker protection, paint strippers containing dichloromethane in a concentration equal to or greater than 0,1% by weight may be used in industrial installations only if the following minimum conditions are met:

(a) effective ventilation in all processing areas, in particular for the wet processing and the drying of stripped articles: local exhaust ventilation at strip tanks supplemented by forced ventilation in those areas, so as to minimise exposure and to ensure compliance, where technically feasible, with relevant occupational exposure limits;

(b) measures to minimise evaporation from strip tanks comprising: lids for covering strip tanks except during loading and unloading; suitable loading and unloading arrangements for strip tanks; and wash tanks with water or brine to remove excess solvent after unloading;

(c) measures for the safe handling of dichloromethane in strip tanks comprising: pumps and pipework for transferring paint stripper to and from strip tanks; and suitable arrangements for safe cleaning of tanks and removal of sludge;

(d) personal protective equipment that complies with Directive 89/686/EEC comprising: suitable protective gloves, safety goggles and protective clothing; and appropriate respiratory protective equipment where compliance with relevant occupational exposure limits cannot be otherwise achieved;

(e) adequate information, instruction and training for operators in the use of such equipment.

5. Without prejudice to other Community provisions concerning the classification, labelling and packaging of substances and mixtures, by 6 December 2011 paint strippers containing dichloromethane in a concentration equal to or greater than 0,1% by weight shall be visibly, legibly and indelibly marked as follows:

“Restricted to industrial use and to professionals approved in certain EU Member States – verify where use is allowed.”

Annex 2: Statistics relating to harm caused by use of DCM-based paint-strippers

A report undertaken for the European Commission identified 18 deaths and 56 non-fatal injuries relating to use of paint strippers containing DCM across Europe between 1989 and 2007.¹ These included, in the UK, one incident in 1999 which resulted in 2 deaths in a paint stripping facility, a death in 2002 involving a professional decorator and another fatality in 2006 of a self-employed furniture restorer. In the latter two incidents an additional 16 people were hospitalised.

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) dataset contains 7 references to 'dichloromethane' (amongst 2 million records) in reports made between 2001/2 and 2009/10; 5 employee injuries (2 major injuries and 3 injuries causing over 3 days absence from work) and 2 injuries to members of the public.

These RIDDOR figures should be considered with care as they are dependent on the person completing the report using the term 'dichloromethane' (correctly spelt) in their RIDDOR report.

Further consumer fatalities are thought to have resulted from use of DCM paint strippers without appropriate risk management measures, notably adequate ventilation. Regardless of this derogation opportunity, the restriction will not permit consumer use after June 2012.

¹ *Impact Assessment of Potential Restrictions on the Marketing and Use of Dichloromethane in Paint Strippers*, RPA Ltd, April 2007. Available as of July 2011 at weblink http://ec.europa.eu/enterprise/sectors/chemicals/documents/reach/studies/index_en.htm

Annex 3: Implementation plan

Implementation plan

Dichloromethane paint-strippers - derogation from REACH restriction

<i>Action</i>	<i>Actor</i>	<i>Duration</i>	<i>Starts</i>	<i>Ends</i>
<i>Ministerial Scrutiny Stage 1: Planning</i>				
Ministerial clearance	HSE Policy	10 days	22-Aug-11	02-Sep-11
Reducing Regulation Committee (RRC) proforma	HSE Policy	6 days (+)	05-Sep-11	09-Sep-11
Draft Consultation Document	HSE Policy	1 week	01-Aug-11	05-Aug-11
Draft Impact Assessment	HSE Economists	3 weeks	01-Aug-11	19-Aug-11
HSE Board process (correspondence)	HSE Policy	6 weeks	22-Aug-11	01-Oct-11
Lawyer produces further draft SI	HSE Legal Advisors	2 weeks	03-Oct-11	14-Oct-11
DWP legal approval process	DWP Legal	2 weeks	17-Oct-11	28-Oct-11
Finalise Consultation Document	HSE Policy	1 week	17-Oct-11	21-Oct-11
Finalise Impact Assessment	HSE Economists	1 week	17-Oct-11	21-Oct-11
<i>Ministerial Scrutiny Stage 2: Consultation</i>				
Ministerial clearance	HSE Policy	10 days	31-Oct-11	18-Oct-11
Regulatory Policy Committee (RPC) opinion	HSE Policy	10-12 days	14-Nov-11	25-Nov-11
RRC clearance	HSE Policy	6 days (+)	28-Nov-11	02-Dec-11
Consultation	HSE Policy	8 weeks	05-Dec-11	27-Jan-12
Consultation response	HSE Policy	2 weeks	30-Jan-12	10-Feb-12
HSE Board process	HSE Policy	3 months	19-Dec-11	09-Mar-12
<i>Ministerial Scrutiny Stage 3: Final Committee clearance</i>				
Ministerial clearance	HSE Policy	10 days	12-Mar-12	23-Mar-12
RPC opinion	HSE Policy	10-12 days	26-Mar-12	06-Apr-12
RRC clearance	HSE Policy	6 days	09-Apr-12	13-Apr-12
DWP/Defra legal approval process	Defra Legal/ HSE Legal Advisors	2 weeks	16-Apr-12	27-Apr-12
Pass to DWP/Defra Parliamentary branches	Defra Policy	2 weeks	30-Apr-12	11-May-12
Parliamentary procedure	Defra Policy	3 weeks	14-May-12	01-Jun-12
Entry into force	N/A	N/A	01-Jun-12	