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| Advisory Committee on Toxic Substances Current Developments | | ACTS/11/2008 | |
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HEALTH AND SAFETY COMMISSION

ADVISORY COMMITTEE ON TOXIC SUBSTANCES (ACTS)

Current Developments

1. European Regulation on the Classification, Labelling and Packaging of Substances and Mixtures – the CLP Regulation (adopting the Globally Harmonised System - GHS)
2. European Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)
3. European Marketing and Use Directive (76/769/EEC) – proposal to restrict Dichloromethane
4. Current and Future Disease Reduction Programme Activities

1. European Regulation on the Classification, Labelling and Packaging of Substances and Mixtures – the CLP Regulation (adopting the Globally Harmonised System - GHS)

At the July 2008 meeting, we explained developments in the negotiations for the proposed Classification, Labelling and Packaging of Substances and Mixtures Regulation (CLP Regulation) which will adopt the GHS in EU Member States, and the high profile role played by the UK (represented by HSE). We also outlined the various domestic activities we have pursued, such as Parliamentary Scrutiny clearance, consultation activities, and the agreement of the UK's Regulatory Impact Assessment.

Since July, there has been much activity and considerable effort in the European Parliament, the Council and the European Commission, to achieve a First Reading Deal between the Parliament and the Council.

On 3 September 2008, the European Parliament voted to secure a First Reading deal with the Council on the CLP Regulation. The CLP Regulation is expected to be published in the Official Journal towards the end of the year, and will enter into force 20 days later.

CHIP Regulations

Although the CLP Regulation will be directly-acting on all Member States, it is necessary to produce national enforcing regulations and to deal with the necessary and/or residual legal amendments needed to align national legislation with the changes at European level.

These amendments are:

- **implementation of Directive 121/2006** – this amendment deals with the remaining elements of Directive 121/2006, the so-called REACH 'daughter' directive. The Directive sets out the necessary amendments that need to be made to the Dangerous Substances Directive, the Dangerous Preparations Directive and the Safety Data Sheets Directive as a result of the REACH Regulation. Most of these amendments are being dealt with through Defra's REACH Enforcement Regulations. However, a few elements remain relating to classification and labelling which could not be dealt with until the CLP Regulation was concluded. These amendments are limited and relate mainly to test methods (Annex V of Dangerous Substances Directive) now under REACH Article 13, and a few bits and pieces relating to the GB Approved Classification and Labelling Guide (Annex VI of DSD). But they need to be given legal effect in the UK fairly promptly.
- **early compliance with the CLP Regulation** – we need to add a new provision that will enable duty holders to comply with the CLP Regulation as an alternative to CHIP from the moment the Regulation is adopted and throughout the transitional period if they choose to do so and subject to the transitional arrangements, prior to the mandatory compliance dates of 1 December 2010 for substances and 1 June 2015 for mixtures.
- **enforcement provisions** - we will ensure that the existing enforcing authorities can enforce all the provisions in the CLP Regulation, where necessary, where duty holders apply the Regulation as an alternative to CHIP during the transitional

period. We are expecting all the existing enforcement powers and sanctions to be carried over from CHIP.

- **disposal of the GB Approved Supply List** - currently, the HSE publishes Annex 1 of the Dangerous Substances Directive and subsequent ATPs through the Approved Supply List or ASL. Annex 1 and the ASL list all the harmonised classifications and labelling requirements agreed by Member States. The ASL is currently only available in paper form and requires a legal provision in CHIP to allow its publication. With advances in technology, access to the internet and availability of online chemical databases (including the forthcoming ECHA databases under the CLP Regulation), we have decided to end publication of the paper-based ASL. The amending regulations will include the necessary legal 'switch-off'.
- **inclusion of an ambulatory reference** - the CLP Regulation includes provisions that allow certain Articles and the technical Annexes of the Regulation to be amended through Adaptations to Technical Progress or ATPs. This is usual for European law, especially those laws that are highly technical in nature. When such amendments are made, there needs to be a corresponding provision in national legislation to be sure that the changes will also apply in the UK. This can be achieved through an 'ambulatory reference' that will allow national law to stay current where the European law "is amended from time to time".
- **the term "preparations" currently required by the Dangerous Preparations Directive, needs to be replaced with the term "mixtures"** - as required by the CLP Regulation.
- **'Switch-off' CHIP** - the regulations will also include a provision to 'switch-off' CHIP entirely (with the exception of the enforcing provisions for the CLP Regulation) at the end of the transitional period in 2015.
- **a few of relatively minor editorial changes to ensure references to other legislation is up to date.**

CLP Regulation – Competent Authority

The CLP Regulation requires that each Member State set up a Competent Authority (CA) to perform certain administrative functions. The main role of the CA is that it can propose harmonised classifications for substances on behalf of a Member State. The Competent Authority also has the right to request the information that a supplier has used to classify and label substances or mixtures that they have put on the market, and plays some minor administrative roles such as receiving information on whether requests for use of alternative chemical names have been granted.

Consultation

The new CHIP regulations will be consolidated and known as CHIP 4. HSE will be consulting on the proposed amendments and the options for establishing the CLP Competent Authority through a formal Consultative Document, expected to be published in December 2008. CHIP 4 is expected to enter into legal effect in May/June 2009.

Downstream legislation

In our report to the July 2008 meeting, we set out the European Commission's proposals to amend certain Community legislation to align with GHS terminology, but to maintain the existing scope essentially unchanged. We have since been advised that the proposal for a

Council Decision to amend the following Directives: Cosmetics (76/768), Toys (88/378), Volatile Organic Compounds (99/13), End-of-Life Vehicles (2000/96), Waste Electrical and Electronic Equipment (2002/96), and the Commission Directive on paints and varnishes (2004/42), has been replaced with a proposed Council Directive. As the detail has remained the same, and the proposed changes do not in any way affect the scope and/or duties of the affected Directives, the UK agreed with this alteration.

The six Directives are the responsibility of Defra and BERR. We have asked colleagues in those departments to take responsibility for making the necessary amendments to the affected domestic legislation. The deadline for implementation is 1 April 2010, although the amendments are not required to take legal effect until 1 June 2010.

We await further proposals from the European Commission on the necessary changes to other affected downstream legislation.

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2. European Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

REACH downstream use and CAD/COSHH

REACH duties on downstream users are expected to increase in significance as registration activity builds, towards the end of 2010. To help employers throughout Europe prepare, guidance on the relationship between REACH and the Chemical Agents Directive is being developed at the Community level with DG Employment and the Luxembourg Advisory Group Working Party on Chemicals.

Domestically, HSE are drafting guidance for UK employers and Trades Unions Safety Representatives to explain how REACH duties on downstream users interact with the (unchanging) COSHH risk assessment and control duties. HSE would like to consult with ACTS members on drafts this year, and aim to have working drafts by late November. HSE will also be reviewing e-COSHH Essentials and the COSHH website over coming months, and our aim is to include minor revisions necessary to align the main body of the COSHH risk assessment process with REACH requirements.

Candidate List

The first Candidate List of substances for eventual inclusion in the list of substances requiring authorisation ('substances of very high concern', SVHCs) is due to be published by the European Chemicals Agency (ECHA) at the end of October. The first iteration of the Candidate List will contain 15 substances, including one entry 'Alkanes, C10-13, chloro (Short Chain Chlorinated Paraffins)', proposed by UK.

Annex XVII – Restrictions

A review of Annex XVII to the Regulation, which transposes into direct-acting EU law the requirements of Marketing and Use Directives previously implemented in the UK, is nearing completion. The review has aimed to harmonise language use and preserve scope amongst the disparate Directives being replaced. A potential problem with an unintended consequence relating to asbestos has been resolved, and UK will be able to maintain our existing approach to asbestos regulation.

Risk Communication Network

REACH article 123 places a duty on Member State Competent Authorities to ‘... inform the general public about the risks arising from substances where this is considered necessary for the protection of human health or the environment.’

The European Chemicals Agency is establishing a Risk Communication Network of representatives from Competent Authorities and other stakeholders to facilitate this and related duties. ECHA is facing some opposition from Member States, including UK, who indicate that the duties placed on industry by REACH should not be disregarded or circumvented by burdens on enforcers to communicate risks unless we consider this necessary.

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3. European Marketing and Use Directive – proposal to restrict Dichloromethane

In the Current Developments paper for the 9 July meeting, ACTS members were informed about developments concerning the European Commission’s proposals to introduce a marketing and use restriction on dichloromethane (DCM)-based paint strippers.

The Commission’s original proposal was to prohibit the supply of DCM-based paint strippers to the general public and to professional users. Member states would individually be allowed to permit the continued use of these paint strippers by professionals, subject to them obtaining a licence following training in safe use. The use of DCM-based paint strippers would be permitted in industrial installations provided that certain safety conditions, such as the provision of effective exhaust ventilation and appropriate protective clothing, were met.

The UK’s position was that the restriction was disproportionate in view of the relatively small number of deaths resulting from the use of DCM-based paint stripper (18 in the EU since 1989). A licensing scheme for trained professional workers was seen as being unnecessarily bureaucratic.

Discussions on the text of the restriction have been pursued in the forum of the Council Working Group on Technical Harmonisation (Dangerous Substances) and in the Environment Committee of the European Parliament. There is an overall majority view among Member States for a restriction on the use of DCM- based paint strippers by consumers and professionals and the UK is in a distinct minority in opposing this position. However, most Member States, including the UK, want to avoid the bureaucracy and cost of a licensing system.

The European Parliament's Environment Committee has voted in favour of a prohibition on supply to both consumers and professionals, taking the line set out by the Parliament's rapporteur Carl Schlyter (Sweden, Green).

The HSE undertook an internet consultation in August to ascertain the views of stakeholders to the Commission's proposals. The majority of comments received opposed the ban on professional use, specifically because of the use of DCM-based paint strippers in the aerospace industry and in the renovation of heritage buildings.

The French Presidency is still aiming to achieve an agreed compromise position in Council before the end of the year, leading to a "First Reading Deal" with the Parliament when it comes to plenary vote in mid-December.

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4. Current and Future Disease Reduction Programme Activities

The Disease Reduction Programme (DRP) is focusing on three priority areas: **occupational cancer (including asbestos), respiratory disease** and **skin disease**. In each of these areas, DRP is delivering a variety of initiatives to raise awareness of the risks from exposure to chemicals and change the behaviour in target industries. To ensure that these initiatives are effective DRP is working with a range of stakeholders to take forward a mixture of regulatory, enforcement, communications and supply chain interventions.

Outlined below are the main areas of work the DRP will be taking forward over the next few months:

Asbestos

- Continuation of Duty to Manage inspection and enforcement activity by both FOD and LA inspectors
- Development and roll out of new online facility (e-tool) intended for SME duty holders. E-tool to assist understanding and compliance with Building owners'/managers' responsibilities under 'Duty to Manage' (reg 4 of CAR 2006). This is currently being tested for usability.
- Following a successful regional media pilot in NW England. HSE has worked with stakeholders to launch a national asbestos campaign – 'Asbestos – The Hidden Killer'.

Key stakeholders inc. Trade Unions, Trade Associations, supply chain and hire outlets and victim support groups are supporting the campaign and have shared in the development of material. Victims and bereaved families have contributed their stories to raise the profile of this important campaign, which began on 13th October, with a media launch on 22nd. It runs for 6 weeks and targets building maintenance and repair workers who are still at risk from exposure to asbestos. See <http://www.hse.gov.uk/hiddenkiller>

- 'Step Change' events for CEOs of large licensed asbestos removal companies; in which they are trained on the management of asbestos-related risks, and production of a management plan, have now been completed. The possibility of events for the refurbishment and development industry is being explored.

Cancer

- Last June HSE hosted a workshop to discuss ways in which stakeholders might work together to tackle occupational cancer. An emerging theme from this was the need to improve the penetration of messages and the understanding and training of employers and workers, including SMEs. It is anticipated that work will be taken forward with stakeholders in individual sector groups.
- HSE is working with the surface treatment industry to assess working practices and exposure controls in 100 workplaces, for chromium (VI) and nickel. This will include quantitative exposure assessment by biological monitoring (BM). The aim is to track trends in exposure, feedback on the efficacy of controls and promote awareness of personal exposure risk.
- HSE is also working with SAFed, BINDT and FIAC to carry out BM in workers in formulators and end users of azo dye penetrants used in non-destructive testing. The results for formulators will be reported to WATCH when available.

Respiratory Disease

Engineering Control Initiative

Following the publication of the guidance and pocket card on the design, maintenance and use of LEV, we are now seeking to make sure that key messages are reaching DRP's target stakeholder groups. To this end, in addition to the direct mail shot to woodworkers in May, we are offering HSE's LEV training material through six briefing days to those who train others in the use of LEV. The first briefing took place on 24th October. We will also be piloting road shows for users and suppliers in the March 2009.

Kerb cutting intervention

The kerb, block and paving cutting initiative continues to gain support from many stakeholders in the construction sector. For example about 238,000 of HSE's 'Time to clear the air!' leaflets have now been ordered by stakeholders and nearly 1000 'Time to clear the air!' DVDs and 3000 paver markers. Stakeholders in contract firms and local authorities have also undertaken to provide information to their workforce through training and toolbox talks. Interpave's (British Pre-cast Concrete Association) guidance "Cutting Paving" is now receiving 150 downloads a month and the DVD has been downloaded 524 times from You Tube and a supplier of water bottles reported an increase in demand from under 2000 to over 6000 immediately after the launch event.

The Highways Agency safety training vehicles will feature the project at their launch event on the 4th November along with their safety at road works campaign. One tool hire company (Mark One Hire) is trialling offering free water suppression kits and the Highways Agency will permit the use of plastic kerbing provided they have a British Board of Agreement Highways Agency Product Approval Scheme certificate. This means that their use will no longer be a departure i.e. special permission will not be needed once the relevant documentation (1100 series) has been updated.

Asthma UK's Workplace Charter

On Monday 17 November, Asthma UK will be launching their revised Workplace Charter, *Asthma at Work - Your Charter*. HSE is a Charter partner and, together with other members of the Asthma Partnership Board, has supported Asthma UK in developing the updated Charter, which sets out 5 measures to significantly reduce asthma and its impact in the workplace. The Charter has been revised to ensure it is up-to-date following the introduction of UK-wide smoke-free legislation and has also been made more concise. A photo opportunity to mark the launch will be attended by Lord McKenzie and Neil Churchill, Chief Executive of Asthma UK. A case study to support the launch will highlight the respiratory risks associated with flour dust.