

## MINUTES OF THE SECOND MEETING OF THE UK REACH ENFORCEMENT LIAISON GROUP (ELG)

HSE, REDGRAVE COURT, BOOTLE  
MONDAY 1ST JUNE 2009

### Organisations represented

UK REACH Competent Authority (CA)  
Health and Safety Executive (HSE)  
Environment Agency (EA)  
Health and Safety Executive Northern Ireland (HSENI)  
Scottish Environment Protection Agency (SEPA)  
Department of Energy and Climate Change (DECC)  
Northern Ireland Environment Agency (NIEA)  
Her Majesty's Revenue and Customs (HMRC)  
Department of the Environment, Food and Rural Affairs (Defra)

Apologies were received from the Local Authorities Coordinators of Regulatory Services (LACORS)

Chair and Secretariat functions were provided by the UK REACH CA

### 1. Welcome and introductions

The Chair of the ELG welcomed all members and thanked them for attending. As there were some new members, each person introduced themselves to the group.

### 2. Matters arising from the previous meeting

Members discussed publishing the minutes of the ELG meetings on the REACH website. The Chair stated that, while it could be expected that much in the minutes could be published, there may inevitably be some aspects to discussions that are not suitable for publication and would be exempt under Freedom of Information legislation. In relation to the minutes of the first meeting, the Chair asked members to let the Secretariat know, by the end of June, if they believed any parts of the text should be exempted from publication. **Action: All**

Some members had not yet joined the REACH Government Internet Community. The Secretariat of the Steering Committee for the UK REACH Delegated Competent Authority ('the Steering Committee') would re-issue the invitation to join. **Action: Secretariat for the Steering Committee.**

The Chair had invited a representative from the Health and Safety Authority (HSA) in Ireland to attend this meeting as an observer, though unfortunately it was not possible for a representative to attend. The Chair stated that the papers for the meeting had been circulated to HSA, and so too will the minutes. HSA will be invited to the next meeting of the Group.

Members were thanked for their comments on the Article 117 report to the Commission. This document had been put to the Forum at its December 2008 meeting for adoption. Work on the draft REACH Enforcement Strategy has not been progressed since the last ELG meeting, due to a higher than anticipated level of

compliance issues received by the UK REACH CA. The Chair thanked members for comments made so far, and stated that work will continue on the Strategy as soon as possible.

The Chair agreed to check that the minutes of the Forum meeting in December 2008 have been circulated to members. **Action: Chair.**

The Chair then referred members to the revised rules of procedure, which had been updated following members comments. It was pointed out that, while the wording of the terms of reference had originally mirrored those in the Memorandum of Understanding for REACH Enforcement ('the MoU'), the MoU had since changed and would be finalised within the next few months. Members agreed to postpone the adoption of the rules of procedure until the MoU had been finalised, in order to ensure the wording was consistent between both documents. One member suggested a further change to the current wording (concerning enforcement policies) which was accepted by the members.

### **3. Feedback on operational activities including enforcement action**

The Chair noted that REACH enforcement has been operating for six months, and invited members to outline their enforcement activities to date.

The Chair gave a presentation detailing the enforcement activities of the UK REACH CA so far (**Action: Chair to e-mail this presentation to all ELG members**). Around 70 investigations had been undertaken or commenced by the CA into registration-related compliance issues, and a number of notices had already been served. These investigations had been prompted by complaints received by the CA, voluntary approaches to the CA, and referrals (from other enforcing authorities, Member States and ECHA). Dealing with this reactive caseload has resulted in a delay in the implementation of the CA's proactive work, though a trial was currently underway on its proposed intelligence-led, targeted inspection procedure, based on the EA model.

Defra has drafted guidance for Local Authorities on REACH enforcement. One member asked whether all the enforcing authorities should be using the same forms, e.g. for enforcement notices. The conclusion was that this may only be possible for enforcing authorities that 'share' enforcement powers, e.g. HSE, HSENI and local (health and safety) authorities. The Chair agreed to circulate HSE's new suite of forms for members' information. **Action: Chair.**

The Environment Agency gave a presentation on its enforcement activities on marketing and use restrictions under the Controls of Dangerous Substances & Preparations Regulations 2006, which from today (01 June 2009) switch over to REACH (Article 67 and Annex XVII). Members were informed of the EA's approach to enforcement, and its enforcement campaigns on nonylphenol and its ethoxylates, and a further campaign on short-chain chlorinated paraffins (SCCPs). A number of Information Notices had been served, and evidence of non-compliance was found. The EA is preparing to publish a report of its enforcement activities, and will circulate its draft in due course to ELG members.

DECC explained their intention to contact dutyholders it regulates under the Offshore Chemicals Regulations 2002, to ensure that the chemicals used offshore have been pre-registered where required. They are working with industry and are already operating a Chemicals Working Group for REACH. DECC have produced a REACH

guidance document for the oil and gas sector and agreed to circulate this to members. **Action: DECC**

SEPA are hoping to expand their REACH enforcement team with the creation of a new regulatory post, and informed members about discussions between SEPA and Scottish local authorities to produce a supporting document to the MoU.

#### **4. REACH and customs authorities**

Three issues were raised under this Agenda item:

- (i) Transfer of functions between HMRC and the UK Borders Agency (UKBA). Members were told that HMRC will shortly transfer some of its duties to the UKBA. The transfer is due to take place in August, subject to the parliamentary process (if not, then the transfer should take place in November). There will be minimum impact for stakeholders as they will still deal with the same people in UKBA. The more noticeable change will be for the UKBA itself as HMRC will then become one of its customers. When this change takes place, UKBA will be able to approach HMRC on behalf of the ELG. Furthermore, primary legislation will ensure that all legislative references to HMRC will be changed to UKBA where appropriate, so no change to the wording of the REACH Enforcement Regulations 2008 would be required.
- (ii) The definition of importer in REACH and customs legislation. An issue relating to key differences between the definition of the term 'importer' in customs legislation and in REACH had recently been raised at the ECHA Forum, though no real conclusions seem to have been reached. Members agreed to consider this issue in the UK context, and the Chair agreed to forward HMRC the correspondence between the Commission and France (the Member State that had originally raised the issue). **Action: Chair.** The Chair noted that REACH and importation in general was the subject of much work at the European level, with a specific Working Group having been established at the April 2008 Forum meeting to look at the relevant issues.
- (iii) Requesting and handling HMRC data. It was noted that the REACH Enforcement Regulations 2008 allow HMRC to share information with named enforcing authorities but require recipients not to disclose that information without permission. Members enquired of HMRC about the rules concerning applying for information and their expectations of how it should be handled.

#### **5. Progress of the Memorandum of Understanding and next steps**

Completion of the MoU has been delayed. The version of the MoU circulated prior to this meeting was a post-consultation version including comments and amendments suggested by Defra lawyers, as well as a number of minor editorial corrections. To progress the work on the MoU with a view to its being finalised and signed off by the enforcing authorities, members were requested to provide HSE with their comments on the latest version by the end of June. Because the current version already contained many comments and suggestions, members were asked to respond only to those suggestions and comments that they were not able to accept (rather than positively indicate their agreement to each and every amendment proposed in the current version). HSE aims to have a final version of the MoU by the end of July.

**Action: All, by end June**

Members also discussed the current situation between the EA and local authorities in terms of environmental enforcement under REACH. Though a written agreement is being prepared, this is not intended to be as formal a document as the MoU. **Action: EA to send the current version of the agreement to SEPA.**

## **6. Developments at European level**

Members were informed of developments at the fourth ECHA Forum meeting which took place in April 2009. An informal note of the Forum meeting had been circulated to ELG members prior to this meeting, which indicated particular areas of interest. A first draft of the formal minutes is expected in July and will be forwarded to members for information and any comments they wish to make. **Action: Chair.** Members were also told of the presentation delivered at the Forum meeting concerning the UK approach to the enforcement of marketing and use restrictions (now under REACH Article 67 and Annex XVII). The presentation was very well received and discussion continued informally over the remainder of the meeting, with a number of Member States asking for more information

A presentation was given concerning the REACH EN-FORCE-1 project, the first EU-wide REACH enforcement project discussed and agreed at the Forum, and the UK participation in it. **Action: UK REACH CA to circulate the project manual**

At the December 2008 meeting of the ECHA Forum, a Working Group had been established to develop minimum criteria for REACH inspections. Approximately nine Member States are taking part in the Group, which will be chaired by the UK and is due to report back to the Forum in December 2009. In the next few weeks, the UK will develop a draft minimum criteria document, and will invite comments from ELG members so that the views of all the UK enforcing authorities will be represented.

## **7. REACH IT and (electronic) information exchange**

Four different aspects were discussed under this Agenda item:

- (i) State of play with Member States' CA access to REACH IT. Access to REACH IT was originally promised by the end of April 2009. The system is now technically ready however, there are some obstacles to overcome with regard to the security requirements.
- (ii) Inspector access to REACH IT (the 'RIPE' project, i.e. REACH Information Portal for Enforcement). RIPE will grant access to approximately 80% of data held in the ECHA database (though this information will relate to UK data only). RIPE funding will come from ECHA so the UK does not expect to incur costs in relation to the system. All members of the ELG will be provided with access to the database. The target date to allow access to the database is December 2010.
- (iii) EU-wide electronic information exchange systems. Currently, a Working Group of the ECHA Forum has been set up to look into electronic information exchange systems; in particular, whether an existing system can be used with modifications (e.g. ICSMS), or whether an entirely new system is needed. The end result will be a system that allows for the rapid communication of issues arising about a substance in one Member State to others.
- (iv) Discussion on possible UK systems for information exchange. The Chair suggested that the Government Intranet Community Site could be used for

information exchange, as well as a central store of information and guidance on UK REACH enforcement. Any information that members want to appear on the Site should be sent to the Secretariat of the Steering Committee.

#### **8. Update from Defra**

Members were informed of legislative developments concerning administrative penalties, namely the Regulatory Enforcement and Sanctions Act 2008. It has been decided that, for now, REACH should not be included in current proposals to make administrative penalties available to environmental regulators, as this could create disparity between different types of REACH enforcers (environmental, consumer safety, occupational health). **Action: Defra to circulate the current consultation document on administrative penalties to members.**

**Close**