

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

HSE HQ, Redgrave Court, Bootle, Merseyside  
Wednesday 10<sup>th</sup> December 2014

## Organisations represented

Department of Energy and Climate Change (DECC) (by teleconference)  
Department of the Environment, Food and Rural Affairs (DEFRA) (by teleconference)  
Environment Agency (EA)  
Health and Safety Executive (HSE), Chemicals Regulation Directorate (CRD)  
Health and Safety Executive Northern Ireland (HSENI) (by teleconference)  
Home Office (HO) (by teleconference)  
HSE, Field Operations Directorate (FOD)  
HSE, International Chemicals Unit (ICU)  
Natural Resources Wales (by teleconference)  
Northern Ireland Environment Agency (NIEA) (by teleconference)  
Office of Rail Regulation (ORR)  
Scottish Environment Protection Agency (SEPA)

Representatives from the Irish Health and Safety Authority (HSA) attended as observers

Chair and Secretariat functions were provided by HSE's CRD.

## 1. Welcome and introductions

The Chair of the ELG welcomed all members and thanked them for their attendance. Participants introduced themselves for the benefit of teleconference participants. The Chair requested items for AOB and the representative from SEPA indicated that he wished to flag-up the SEPA consultation on enforcement powers.

## 2. Administrative issues

(i) Approval of minutes from the last meeting:  
The minutes of the last meeting were agreed.

**Action: Secretariat to add to website.**

(ii) Outstanding issues from last meeting:  
To be dealt with within Agenda

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

(i) HSE CRD activities and future plans:

A member of HSE CRD gave a presentation of recent and on-going enforcement activities. The presentation has been distributed to members and additional comments are as follows:

#### **Reactive work**

There has been an increase in the number of reactive interventions as a result of > 100 referrals from OMS via the Ref III project, with 524 interventions and 68 notices served as at 20<sup>th</sup> November 2014.

Ref III – If a National Enforcing Authority (NEA) inspects an importer and they state that the registration is being done by an OR, this information is passed to the NEA of the OR to perform the necessary checks.

Google dossiers fulfil completeness check requirements but probably not a compliance check. ECHA has been informed that if they undertook a compliance check and served SONCs if appropriate then issue would be more easily dealt with by enforcing authorities.

Work has been undertaken in relation to the on-line sale of gas masks potentially containing asbestos, which had received press and ministerial interest.

#### **Proactive work**

There is no REF project planned for 2015, Ref IV will occur in 2016. Instead in 2015 the Forum has agreed to undertake pilot projects, and of these the UK is contributing to the authorisations project, but not to projects on CLP or child resistant fastenings.

#### **Enforcement Liaison at EU level**

The Interlinks Working Group is looking at how substance evaluation is to be undertaken. There could be many registrants over many MS. There is to be a meeting at ECHA to bring together enforcing authorities and competent authorities in MS.

Two HSE Inspectors attended the 'Train the Trainers' event. DECC queried whether HSE training material was available to establish if approach was consistent with how DECC would approach offshore sites.

**Action: HSE CRD to provide training material to DECC, and if required arrange a training session.**

DEFRA indicated that the issues regarding Google dossiers were being raised via CARACAL and that ECHA should be including a compliance check, but even without a compliance check the legislation allows enforcing authorities to take action. In addition  
REACH Enforcement Liaison Group

profile of issue is being raised by Belgian Minister for REACH with REACH Ministers in other MS.

HSE CRD indicated that discussions were ongoing on how to deal with dossier inadequacy in the case of joint submissions.

[REDACTED]

[REDACTED]

*Redacted under the Freedom of Information Act 2000, section 31(1)- Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*

*(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2).*

(ii) EA gave a presentation about their recent enforcement activity and future plans.

The presentation has been distributed with these Minutes and additional comments are as follows:

- An enforcement campaign on lead paint, including working closely with English Heritage, has found lots of restricted products for sale and English Heritage has amended their notification process for lead paints used in restoration processes.
- Work undertaken on mercury measuring devices including internet surveillance
- Risk Prioritisation Tool – identified top 20 chemicals - offer of access to tool for all
- Cross Regime approach covering Water Framework Directive, REACH, POPs requirements
  - Testing on plastic guttering and shower curtains undertaken
- Attending CLEEN, EU Biocides III – Treated articles, eCommerce III, eForum project and meeting of HSE CRD / EA to discuss these projects scheduled for 11 December 2014.

HSE CRD indicated that prioritisation tool was of interest to HSE CRD

**Action: HSE CRD to arrange meeting with EA for a demonstration of the prioritisation tool.**

NIEA indicated that in NI they were forming an interdepartmental substances group and the tool would help to guide this group regarding the Water Framework Directive.

**Action: NIEA and EA to liaise further about the prioritisation tool.**

DEFRA raised awareness that there were EU discussions about potentially bringing the REACH restriction regarding ammonium salts within the scope of an explosives 'precursors' regulation instead.

#### **4. Developments at European Level**

(i) Feedback from Forums 18 and 19

Presentation given by HSE CRD-The presentation has been distributed and the ELG discussed points of interest.

**Action: HSE ICU to liaise to establish an appropriate UK representative for CLP working group.**

**Action: HSE CRD to liaise with FOD contact regarding work of ADCO.**

**Action: HSE CRD to send two presentations on nano substances as presented at Open Meeting of Forum 19 to DEFRA.**

The next Forum meeting will be held in the week commencing 23 March 2015.

**Action: Secretariat to provide agenda in advance.**

**Action: Members to offer comments for discussion by the end of the previous week.**

Members discussed possible participation in REF IV, on Restrictions. EA is on the WG for REF IV because EA wanted to directly influence what Ref IV covers. The possibility of using REF IV to assess the practicability of enforcing restrictions was discussed. This may be a possibility in the future and may feed into whether restrictions should be written in the same way in the future.

HSE CRD indicated that unless anyone wishing to raise a specific restriction to be taken forward then HSE CRD and EA will feed back progress with REFIV in coming months, planning work to be undertaken in 2015 and operation in 2016.

#### **5. Authorisation**

(i) Forum Pilot Project

HSE FOD provided feedback indicating that he had taken over the role of working group member from HSE CRD. The project was focussing on authorisations for two substances, musk xylene and MDA.

HSE FOD summarised that musk xylene is a synthetic chemical used to mimic musk, the risks result from its environmental hazards. It is used in cosmetics and therefore he has been exploring the circumstances in which the exemption for cosmetics applies, the permissible concentrations in cosmetics and liaising with LA's as an enforcing authority for cosmetics. Work has been undertaken to contact companies in supply chains using

electronic pro forma and appropriate enforcement action to be taken if non-compliance found.

HSE FOD summarised that MDA is used in rigid foams and epoxy resins, and that the restriction is specific in terms of geometry, but the identity of the MDA in the authorisation was less restrictive. HSE FOD raised issue of lack of information on how to bring non-compliant products into compliance.

In response to request for any questions:

A member from DEFRA indicated he wasn't on Forum project itself but noted that at a REACH Commitology meeting there was discussion of the possibility of a mandate working group to consider the enforceability of CSRs. DEFRA flagged up concern that don't want this work to become a back door route to getting extra conditions to authorisation.

A member from HSE CRD stated that he had put UK forward to be on a Forum WG to look at the enforceability of Authorisations.

(ii) EA project – Already discussed in Items 3 and 4.

## **6. Update from Defra/HSE**

### **(i) Defra input**

DEFRA had four points to note (main bullets below):

- **Article 117 report**
  - Same questions as 2010 to respond to – but expect amendments to question set for 2020
  - Substantial section on enforcement, which requires statistics
  - HSE CRD to collate information and submit to DEFRA

**Action: HSE CRD as ELG Secretariat to contact members to inform them of the mechanism and timescale for submission of contributions to the Article 117 report.**

**Action: DEFRA, HSE CRD and HSE ICU to discuss presentation of data, in particular whether or not to distinguish enforcing authorities.**

- Derogation of dichloromethane – HSE , HSE NI can now enforce
- Consolidation/amendment of REACH Enforcement Regulations (RER) is being considered by Defra
- Raised awareness of Commission Draft Directive for Environmental Inspections for compliance insurance, which mentions REACH. This gives clarity over what

environmental regulation involves and sets out detailed prioritisation, planning and reporting procedures.

**Action: HSE CRD and HSE ICU to forward new Enforcement Notice wording and previous legal advice regarding wording and powers to DEFRA.**

HSE ICU asked whether members could now agree the ELG Terms of Reference, which were circulated at the previous ELG meeting, in light of the required amendments having been taken on board.

The member from DECC stated that he had no concerns but was waiting for clearance from management before he could confirm this.

All other members in agreement.

**Action: DECC to provide their agreement to ELG Terms of Reference or propose further amendment.**

**Action: Secretariat to publish ELG Terms of Reference once agreed.**

**(ii) Application of REACH to Members of the Public (MoP)**

HSE ICU stated that discussions to date had established that REACH does apply to MoP per se.

- Regarding restrictions MoP are involved in the use of products
- Schedule 6 of RER allows environmental concerns to be enforced on MoP property
- Gap with regard to enforcement of consumer safety issues on MoP property.
- LA enforcing officers can enforce retail sale under REACH but not from residential premises when no environmental matter is involved.
- Current focus on issue with asbestos in gas masks

DEFRA stated that gas masks were a case in point but issue was predominantly placing on the market rather than use. In terms of consumer safety we will need to get hold of modern version of LACORS. DEFRA indicated that there would be no support for expanding consumer safety powers with respect to REACH over and above existing consumer safety powers

HSE CRD indicated that he intends to be mindful of any implications during further discussions.

DEFRA indicated that HSE CRD should consider asking LA how they would deal with pesticides use in residential properties to see if other consumer safety powers have some relevance to REACH.

HSE ICU indicated that she will be progressing how to progress the enforcement gap.

#### **7. AOB**

SEPA raised awareness regarding forthcoming consultation on proposals to introduce civil sanctions for REACH under the Regulatory Reform Act. SEPA indicated that they didn't want to disturb the enforcement of UK regulations such as REACH that were similar across all parts of the UK. External consultation is coming out on SEPA Consultation pages at the end of January/beginning of February 2015.

**Action: SEPA to send link to SEPA consultation**

**Action: ELG Secretariat to distribute it to ELG members**

#### **8. Date of the next meeting:**

The ELG will continue to take place twice annually at this time. The next meeting will provisionally be scheduled for end of June 2015.

**Action: Secretariat to obtain availabilities of members nearer the time.**

The Chair brought the meeting to a close, thanking all members for their attendance and contributions.

**Action: Secretariat to circulate Minutes of meeting and copies of presentations.**