

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

Defra, NOBEL HOUSE, 17 SMITH SQUARE, LONDON  
THURSDAY 21<sup>ST</sup> JANUARY 2010

### 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)  
United Kingdom Borders Agency (UKBA)  
Department of the Environment, Food and Rural Affairs (Defra)  
Home Office (Animals Scientific Procedures Division)

Health and Safety Authority, Ireland (HSA) attending as observers.

The Local Authorities Coordinators of Regulatory Services (LACORS) were invited but a representative did not attend the meeting.

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. Observers from HSA, Ireland were also welcomed and introduced.

### 2. Matters arising from the previous meeting

The Chair explained that minutes of previous meetings will be added to the UK REACH CA website soon. This website is in the middle of a redesign which will hopefully be completed soon, and ELG meeting minutes (together with the Agendas) will be available once this upgrade goes live. Again, any ELG members should let the Secretariat know in advance if there are any aspects to the minutes which they believe should not be made publicly available.

The Chair returned to an action from a previous meeting relating to an electronic resource including a bank of general decisions taken following enquiries or during enforcement action would be useful. The Chair proposed that this would be added to the ELG work programme (below). **Action: Secretariat to include this work on the ELG work programme, with a view to creating this resource and making it available on the REACH Government Internet Community website. The Secretariat will also reissue invites to ELG members to join this community.**

The Chair explained that the previously discussed REACH specific HSE forms and notices (delayed due to unexpectedly high levels of reactive work) have now been produced. The Chair explained that while these can be circulated, different authorities may need to produce their own versions. EA have also produced their own notices which they will circulate.

**Action: EA to provide notices to Secretariat for circulation.**  
**Action: Chair to circulate HSE and EA forms and notices.**

All other actions discharged.

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

The Chair gave a presentation outlining the recent activity of the UK REACH CA Compliance Team. (**Action: Chair to email this presentation to all ELG members and observers.**) The UK has made the second largest contribution to the Europe wide REACH-EN-FORCE-1 project, relating to compliance with (pre-)registration and safety data sheet requirements.

The UK REACH CA Compliance Team has started its first proactive campaign focusing on pre-registration of non phase-in substances. Four substances have been selected for proactive inspection later in the year; UKBA asked how these substances had been selected. The Chair explained that the criteria are still under development, but this initial group of substances were selected for a combination of reasons. These include likely high exposure/wide dispersive use, alignment with other enforcement priorities, prior knowledge of concern for substances from ESR or other reviews, and high hazard/risk. EA explained that this is a complex decision and work is being done to formalise and give transparency to their processes. The draft of this should be available by April.

Reactively, the UK REACH CA continues to progress complaints, voluntary approaches from dutyholders and referrals from other enforcing authorities. In relation to the latter, an increase has been noticed in work done with Local Authorities in relation to restrictions. Examples include imported indoor fireworks containing Cat. 2 CMRs and puncture repair kits containing benzene.

EA fed back that they have been involved in less REACH activity than expected, and their annual report is due in April. EA have been collaborating with NIEA, an arrangement they are looking to expand on in future. EA have produced several reports for other CA's including reports on the leather and tanning industries and plastic moulding industry for Portugal, and reports on SCCP's for Canada.

Reactively, EA have focused on PCBs in the energy and chemicals sector and plan to move to the rail sector in the near future. In terms of POPs, over 150,000 hexacholobenzene containing fireworks have been removed from the market this year, with work ongoing with one company struggling to prove disposal. Currently there are 2 campaigns ongoing in relation to NPES. A future campaign will relate to the PAH content of vehicle tyres, a significant issue for UK industry, who anticipate undercutting from overseas. Other substances under investigation include TBT in antifouling systems (widely used by the Chinese fleet), and a campaign to be launched on mercury in measuring devices.

UKBA asked how they could be of support in any of the above projects. EA already have some customs data available and have previously asked for intercepts. The Chair explained that help from the UKBA on a case-by-case basis would be appreciated and the ECHA Enforcement Forum was keen to get customs involved across the EU, however, given their other commitments, resources and operational priorities, this may be unrealistic. Discussions took place concerning commodity codes used when importing substances, preparations or articles into the EU, and the difficulties this can pose to identifying supply chain information under REACH. For example, importers would be more likely to use the codes to describe 'products' rather than substances or preparations, or often one commodity code could cover several chemicals which would all be regarded under REACH as different

substances. Further work will be done to determine best practice for exchange of information with UKBA.

HSENI fed back that they continue to audit relevant dutyholders and generally find good levels of compliance. One major issue is complaints from small companies that larger companies are controlling SIEFs and 'not playing fair'. EA and the Chair confirmed that they were aware of the issues and that smaller companies would need to be wary of requests to share costs equally, rather than being based on company size/turnover. The CA cannot usually become involved in SIEF activity, but has issued guidance. Problems of non-compliance have been found with biodiesel, but UKBA explained that manufacture is likely to reduce as the duty on biodiesel is due to go up to the levels of standard diesel.

DECC explained that the OSPAR Harmonised Mandatory Control Scheme (HMCS) for controlling offshore chemicals is running in parallel with REACH. Offshore businesses are usually downstream users. They are utilising a 'light touch' approach to enforcement at the moment and dialogue with HSE's Offshore Division is needed about the division of enforcement action.

#### **4. Experiences of the Irish REACH CA: results from 2009 enforcement programme and plans for 2010**

The HSA gave a presentation on their recent enforcement activity and plans for the future. **(Action: Chair to circulate this presentation.)** This included their contribution to the REACH-EN-FORCE-1 project. Major issues identified include the pre-registration of preparations and the lack of awareness of late pre-registration and REACH data retention requirements. Particular problems were found around the use of 'mailbox' companies to submit pre-registrations but which did not have a physical presence in the country.

The Chair asked the HSA if they would be willing to combine efforts in future enforcement activity. HSA agreed to combining effort when relevant. Both parties reinforced the idea of closer cooperation in Forum projects.

The HSA has also produced guidance on SIEFs. **Action: HSA to provide this to Chair/Secretariat for circulation**

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

HSE emphasised the desire to get the MoU completed and signed off as soon as possible. Edits to the MoU were discussed.

The UKBA raised the issue of the changes at HMRC and the creation of the UKBA. Under the Borders Agency Act, any legislation mentioning HMRC also applies to UKBA, so no major rewrites are required. This Act also permits them to provide information to another enforcement agency to assist in the activity of that agency, although appropriate procedures will need to be established. Several comments had been received from SEPA, with more expected. **Action: All members to forward their comments to HSE by 12 February.** The comments will then be incorporated into a revised version which will be circulated to secure a yes/no response from each signatory (negative responses required). This is with a view to final sign-off in March. **Action: HSE to determine the physical method for signatures and how to incorporate the Home Office, as they are not named in the Enforcement Regulations.**

## 6. Developments at European level

EA provided feedback on the recent meeting of the ECHA Enforcement Forum. Points to note included:

- Richard Bishop (UK Forum member) was elected Chair of the Forum.
- The Forum heard of the 12 proposals received so far from members for revision of REACH under the Commission's 2012 review of the Regulation.
- The Commission presented a CARACAL paper on the interaction between the Regulation on Accreditation and Market Surveillance (the AMS Regulation) and REACH and re-affirmed that REACH falls within general provisions for AMS, unless there are specific provisions in REACH which take precedence.
- Although likely that ICSMS will be used as electronic information exchange system for REACH, the Commission has yet to confirm its use under the AMS Regulation (although the use of RAPEX has been decided for use where rapid intervention is required). This has delayed the REACH decision. *(NB subsequent to the meeting, the Commission confirmed its use of ICSMS for the AMS Regulation.)*
- A number of practical enforcement issues were discussed concerning proportionate enforcement of Article 5, the provision of safety data sheets, and the scope of the asbestos restriction.
- The outcomes of the REACH-EN-FORCE-1 project were discussed, and the subject-matter of the next common enforcement project was agreed. This project will follow on from the first, targeting formulators and the supply and downstream use duties to which they are subject. A press release and factual report on REACH-EN-FORCE-1 will be prepared for release in March 2010. The UK is also preparing a project manual for an enforcement project on PAHs in tyres, which may be adopted at the next Forum meeting in May 2010 as a further EU-wide project.
- A document on the Minimum Criteria for REACH Inspection was adopted and will soon be published. A second document, not intended for publication, compares the minimum criteria document with the requirements of the AMS Regulation and should be of help to other tasks of the Forum. **Action: Chair to circulate paper on Minimum Criteria for REACH Inspection.**

## 7. REACH enforcement strategy and guidance

The Chair explained changes made to the strategy and guidance paper. Some sections have been removed for inclusion in HSE's REACH topic inspection pack instead, including the sections on management systems and evidence collection. A section on interaction between REACH and other legislation has been replaced by simpler statements. **Action: HMRC to provide text to Chair relating to HMRC/UKBA changes and interaction.** The approach was agreed in principle pending some minor changes. **Action: All to provide comments to Chair by 12 February.** The comments will then be incorporated into a revised version which will be circulated to secure a yes/no response, prior to its publication on the UK REACH CA website.

## **8. ELG work programme**

The Secretariat will work with interested parties of the ELG to produce a work programme for the ELG. EA, UKBA, HSENI and SEPA volunteered to work on the work programme.

**Action: Secretariat to produce initial draft of work programme for circulation.**

## **9. AOB**

HSE gave feedback on a current issue with the asbestos restriction. In particular, this relates to the granting of exemptions for placing articles containing asbestos on the market. A statutory instrument that will amend the REACH Enforcement Regulations 2008 is being prepared.

EA suggested developing and maintaining a matrix of work being done on restrictions / authorisations to demarcate responsibilities and ensure no repetition of effort. **Action: Chair and Secretariat to consider for inclusion in the ELG work programme.**

## **10. Date of next meeting**

The next meeting will be in June. **Action: Secretariat to determine availabilities of members for next meeting, location TBD.**