

Summary

- REACH applies to recovered waste once it ceases to be waste;
- Recovery businesses are considered to be manufacturers under REACH, so may have registration obligations, unless certain exemptions apply;
- Where any recovered substances qualify as “phase-in” substances (e.g. they are listed in EINECS), they are eligible for the phased registration deadlines available in REACH. However, pre-registration before 1 December 2008 is vital to be able to take advantage of these deadlines, otherwise full registration is required immediately after 1 December to continue to market the substances;
- It is important to think about how to (pre-)register recovered materials consisting of two or more substances – either as a single variable composition (UVCB) substance or as individual substances within a preparation (mixture);
- There are some exemptions from registration obligations within REACH which could apply to recovered substances;
- Compost, biogas and anaerobic digestate are exempt from registration under Annex V of REACH.

Introduction

This advice on the REACH requirements for recovered waste substances is subject to final guidance being published by the European Commission and the European Chemicals Agency (ECHA). It is based on the latest available information, and is intended to help businesses involved in waste recovery to understand the possible obligations placed on them by the REACH Regulation - particularly for any action that may need to be taken before the end of the pre-registration period on 1 December 2008.

It is important to note that waste itself, as defined by the Waste Framework Directive (2006/12/EC), is specifically excluded from REACH by not being classified as a substance, preparation, or article (Article 2(2) of the REACH Regulation). Therefore, the REACH requirements for substances, preparations, and articles – such as registration, authorisation, and communication of information along the supply chain - do not apply to waste. There is a requirement in REACH for the manufacturers and importers of substances in quantities of 10 tonnes or more per annum, to prepare a Chemical Safety Report. These must include exposure scenarios based on declared uses of the substances, which also take account of hazards present in the waste stage and make recommendations on appropriate risk management measures. For the avoidance of doubt, this does not mean that REACH has any jurisdiction within the waste stage, but that REACH provides hazard information which can be used when waste is being handled.

However, where waste is recovered back into substances that are placed on the market for further commercial use, REACH applies as it does to any other substance placed on the market from the point a recovered substance ceases to be waste and waste management controls no longer apply.

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The point at which waste ceases to be waste is a matter for waste legislation, and REACH does not have any bearing on that. You should check with your local regulatory authority responsible for waste if you are unsure of your specific situation.

Manufacturer or not?

Just because your recovery operations may not be classed as manufacturing under waste or other legislation, you should not assume that you will not be classed as a manufacturer under REACH. In fact, the REACH definition of manufacturer is taken to include those producing recovered substances for placing back on the market, meaning that all such businesses may have the obligations of manufacturers – the most immediate of which is registration of their substances. This does not conflict with the definition of manufacturer in other legislation, since it concerns only the functions set out by REACH. So for example, Pollution Prevention and Control legislation makes a distinction between chemical recovery and chemical manufacture – i.e. chemical recovery is not considered manufacturing under that regime. However, since REACH applies only once waste ceases to be waste, and it is placed back on the market, REACH takes a different view of what a manufacturer is for the purpose of controls in the post-waste situation, without compromising the definition or situation under other legislation.

REACH Obligations

As with any other non-waste manufacturer or importer, the REACH obligations on waste recovery businesses may vary. The most immediate is whether you should pre-register any of your substances. You should be clear that both pre-registration and registration processes apply to substances only, i.e. it is the substances that need to be registered, not the company. For a company to (pre-)register a substance, it must be a legal entity established in the Community. Non-EU-based companies cannot (pre-)register substances, but their EU-based subsidiaries or branches can. It is also important to remember that each individual legal entity of a business or company has to submit a pre-registration or registration – a single submission by one company or a trade association on behalf of everyone dealing with a substance cannot be made.

Pre-registration

The pre-registration period is 1 June to 1 December 2008. In general, substances eligible for pre-registration are those that are listed on the European Inventory of Existing Commercial Chemical Substances (EINECS) – so-called “phase-in” substances. For recovery businesses that are returning such substances to the market, this is important as it may mean that your substances are eligible for an exemption from registration under Article 2(7)(d) of the REACH Regulation, as long as the substance has previously been registered by someone else (doesn't have to be in the same supply chain). However, until these substances have been registered, a pre-registration will be needed to be able to continue recovering and placing them back on the market after 1 December 2008 without the need for immediate registration.

You will need to decide how you are going to classify the substance(s) you recover (and should therefore (pre-)register). There are three possible options:

- As a single well-defined substance, e.g. recovered solvents (toluene, ethanol, etc) or metals.
- As a preparation consisting of a mixture of various well-defined substances, each of which has to be identified and separately registered if appropriate (N.B. preparations themselves are not registered, only their constituent substances).

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- As a UVCB substance (unknown or variable composition, complex reaction products, or biological materials), where the waste streams used may be variable.

It should be remembered that impurities do not require separate registration if they are not intended to be present in the final preparation (despite being present in the waste stream), **and** are present at less than 20%.

Pre-registration is free, and a simple process involving the electronic transmission of some basic data to the European Chemicals Agency. Further information is available on the UK REACH Competent Authority's website at www.hse.gov.uk/reach (<http://www.hse.gov.uk/reach/resources/preregistration.pdf>). Once pre-registered, you will then automatically be part of the Substance Information Exchange Forum (SIEF) for the substance(s) in question from 1 January 2009, along with every other company that has pre-registered an interest in the substance(s). The extent to which you then actively participate in the SIEF is a matter for you to decide. For those companies that proceed to registration, SIEFs benefit their participants by reduced registration fees and sharing of the costs of preparing a joint registration information dossier. SIEF participation will also enable you to know when registration of the substance is likely to take place.

REACH Exemptions

Provision is made in REACH for exemptions from some or all of its requirements, under certain conditions. These are possible because either regulatory regimes in other legislation are considered to be equivalent to REACH in terms of substance information provision and controls, or certain substances or categories of substances are already known to pose little or no risk to health or the environment, or their registration is not considered appropriate (e.g. because they are naturally occurring). More information on exemptions generally is available at www.hse.gov.uk/reach (<http://www.hse.gov.uk/reach/resources/exemptions.pdf>).

For recovered substances, three REACH exemptions are most likely to be possible:

Specific substance exemption under Annex IV, because sufficient information is known to be sure that it presents little or no risk to human health or the environment;

General categories of substances under Annex V, for which registration is deemed unnecessary or inappropriate, and their exemption does not compromise the objectives of REACH; or

An exemption under Article 2(7)(d) of REACH, if the recovered substance is the same as its virgin equivalent that has been previously registered (not necessarily in the same supply chain).

In the case of an Article 2(7)(d) exemption, it is advisable to pre-register your recovered substance before 1 December, unless you are certain that its virgin equivalent has been registered already. Remember, pre-registration does not commit you to registration, but will allow you to continue to place your substance on the market after 1 December until such time as the virgin equivalent is registered.

Compost, biogas, and anaerobic digestate

Annex V of REACH was reviewed earlier in the year, with compost and biogas being included as a specific category of exemption in the legal text. Revised draft guidance on Annex V has been published by the European Commission (see link below), and clarifies that anaerobic digestate is also exempt. This revised guidance is expected to be adopted by ECHA shortly. Registration obligations do not therefore apply to compost, biogas, and anaerobic digestate.

Commission draft guidance on recovered waste substances

The European Commission has published draft guidance on REACH and recovered waste substances (see link below). This explains in more detail how REACH applies to recovered waste,

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and in particular proposes that certain recovered aggregates should be classified as articles for the purposes of REACH, which would remove the obligation for registration. The UK supports the Commission's guidance, and has urged ECHA to make an early decision on its adoption to remove uncertainty within the industry.

For further advice and technical help with the application of REACH obligations, contact the UK REACH Competent Authority's national Helpdesk either by telephone on 0845 408 9575, or email to ukreachca@hse.gsi.gov.uk, or visit the website at www.hse.gov.uk/reach.

The following are links to relevant published ECHA guidance:

Guidance index: http://reach.jrc.it/guidance_en.htm

Data sharing: http://reach.jrc.it/docs/guidance_document/data_sharing_en.htm?time=1223046370

Pre-registration: http://reach.jrc.it/03_rdds_web_content/pre-registration_en/pre-registration_en.pdf?time=1223046314

Registration: http://reach.jrc.it/docs/guidance_document/registration_en.htm?time=1223046241

Substance identification:

http://reach.jrc.it/docs/guidance_document/substance_id_en.htm?time=1223046702

waste and recovered substances: (link will be provided when available, once the guidance is published)

European Commission draft guidance:

Annex V: http://ec.europa.eu/enterprise/reach/docs/reach/com_rev_anx_V_guidance_081010_en.pdf

Waste and recovered substances:

http://ec.europa.eu/enterprise/reach/docs/reach/waste_paper_ca_081026_en.pdf

There is also a useful tool on the ECHA website called 'Navigator' to help businesses identify their status and obligations under REACH:

<http://reach.jrc.it>



WHATEVER YOUR BUSINESS IS, FIND OUT MORE TODAY- don't leave it until it is too late