

REACH – a distributor's perspective

REACH, the new European Union (EU) regulation, which has its name formed from “Registration, Evaluation, Authorisation and restriction of CHemicals”, came into force a year ago and replaced a number of European Directives and Regulations with a single system.

REACH has global implications, as emphasised in *Personal Care*, January 2008, and meeting its requirements is far from straightforward.

As the technical manager of Cornelius, I am tasked with ensuring the company is fully compliant with the legislation. This has been, and will continue to be, an extremely onerous task due to the complex nature of the legislation and the, sometimes, ambiguous nature of the company's position in the supply chain. Outlined in this article is how I have been tackling REACH issues.

Cornelius is a UK-based chemical distribution company selling into a number of markets including that of cosmetics and personal care. The company represents principals and suppliers from a number of countries in the European Union and from China, the US and Brazil. As well as being a distributor, the company also has a manufacturing business which effectively makes it an importer, manufacturer and downstream user.

The company's position is far from unique and many other distribution companies will find themselves in a similar situation.

It is incumbent on all EU companies to comply with REACH wherever they are in the supply chain. Consequently, it is necessary to understand the legislation from each standpoint, in order to comply as required.

Another problem for many distribution businesses is that, as importers, their volumes may be relatively small and it is not cost-effective for them to register substances due to the lack of profitability against the cost of registration. It is therefore necessary for them to ensure that their suppliers are registering the materials so that they, the distributors, can effectively move down the “supply

chain” to become downstream users. This is, of course, only relevant when importing material from outside the EU and has its own set of problems.

Ensuring REACH compliance and the responsibilities this entails are met involves not just internal processes and talking to suppliers. Customers, too, require support and have their own requirements under REACH. One of the most time consuming parts of dealing with REACH is handling the plethora of customer forms which require filling in.

I will describe how I have dealt with these and many other issues as part of my role of ensuring Cornelius's compliance with the legislation. I will outline how we have adapted our IT systems and website to help in this task as well as how we have communicated the requirements of REACH to our suppliers and customers.

I will finish with a “vision of the future” and try to anticipate how REACH will roll out over the coming months and years.

Understanding REACH

It is obviously important to have a sound understanding of the legislation. This is not something that can be achieved overnight. The legislation itself was originally published in a document of nearly 850 pages. It is also written in “legal speak” which does not make for easy reading or, indeed, easy understanding. There have been many articles which I have had to have translated into plain English by “experts”.

Regarding “experts”, there are a huge number of consultant companies and individuals who have been advertising their services over the last few years.

It is really important to try a few out to see who offers the best service for your requirements. I have spoken to a number of consultant companies who have all offered good advice for a relatively small initial subscription fee. Having tried these out I have ultimately picked one which I feel offers the right level of service for my company. I have also taken advantage of the services offered by the various



industry associations of which Cornelius is a member. These include the Chemical Business Association (CBA) and the Cosmetics, Toiletries and Perfumery Association CTPA. Both have been particularly helpful. I tend to use the CTPA when I have questions which specifically concern cosmetics and personal care applications as the legislation has some exemptions for which the European Cosmetics Directive takes precedence.

The CBA has also organised a number of REACH educational events which I have attended and all have been invaluable. It has become apparent that nobody knows exactly how REACH will work and the goal posts are still moving. Just when I think I understand REACH something occurs to make me realise that, still, we all have a long way to go.

Furthermore, I have extensively used the Health & Safety Executive's helpline. The HSE is the UK's “Competent Authority” (CA) and has overall jurisdiction for the implementation and the policing of REACH.

Some months ago I was asked by a local business association to participate in a “REACH Roadshow” which was being organised by the Competent Authority.

I was delighted to offer my services and was asked to prepare and deliver a presentation on Cornelius's implementation strategy. I have since delivered two more such presentations at the behest of the CA. Participating in these events has been extremely useful in focusing my mind on the task at hand and also involves sitting through the CA's own presentation plus question and answer sessions. All of this helps to reinforce what I already know and clarify points I do not.

In essence, understanding REACH is a slow, steady process and cannot be done in isolation. Nobody knows it all but there are people out there who can help. The key is to throw yourself into REACH and it will eventually start to become clear.

'Master-file' system

Having been given the role of ensuring compliance, it was important to understand the magnitude of the task. This would have been impossible if the company did not operate a "master-file" system. Essentially all suppliers and principals were set up in a master-file which included the name, website link and "Champion" etc. The "Champion" is the commercial person within the company who has responsibility for the supplier. The role will be described later in this article.

Products also required master-files and procedures were put in place to ensure all products had to have a master-file before they could be promoted or sold.

The master-file system was used to store other information on products such as MSDSs, specifications, shelf lives and other technical data. These master-files were also used to make information available through the company's website.

This master-file system enabled me to see exactly who the company's suppliers were and what products they were supplying. This information was the basis for all the work that was to follow. I was able to approach REACH issues on a supplier-by-supplier basis.

The supplier master-files also allowed for a statement on supplier strategy to be added and this could then be made available via our website. As regards individual products, I was able to work with our IT department to design a system whereby I could indicate the REACH status of each material as the process of ensuring REACH compliance progressed. This information would then be available via our website.

The initial REACH status would be: "Will be pre-registered", "Do not know" (waiting for confirmation), "Exempt (with reasons)", "Will not be pre-registered", "Already considered registered", and "Has been pre-registered".

As pre-registration gathers pace, the company will be adding "pre-registration submission numbers" to confirm that this has taken place and these will also be indicated on the company's website as the only real proof of pre-registration.

The company's IT capabilities have been extremely valuable in the management of REACH.

Role of the 'Champion'

As mentioned in the introduction, Cornelius fits into a number of categories under REACH. For the sake of simplicity I will outline each of these categories in turn. First I should further explain the role of the "Champion" and why this was, and still is, important in managing REACH and its effects on a commercial business.

From a purely technical point of view, REACH is relatively simple to understand. Identifying the substances which require pre-registration and following the process through to registration will be onerous and difficult but essentially I know what is required to do this. Unfortunately, there are commercial considerations which require that the company cannot commit to pre-registering substances without taking into account the cost involved. Therefore, any decision to pre-register and register requires some commercial involvement.

The "Champions" add this commercial decision making element to the process and have a better understanding of these issues and of the suppliers than I do. I therefore held a number of meetings with the company's "Champions" to discuss the various issues and requirement for each supplier and these were then recorded as a REACH strategy document in one the company's databases. The REACH strategy document was also forwarded to sales and managing directors.



Whether the company is a downstream user, an importer or a manufacturer is not a question that is always easy to answer. If a supplier is from the European Union and is fully committed to compliance then the question is easy to answer and Cornelius is downstream user as far as the definitions in the legislation are concerned.

The situation is more ambiguous when dealing with suppliers from outside the European Union. Because REACH is only law in the EU, it is effectively the legal responsibility of the importer to pre-register substances. In this situation it was important to try to change the status of the company to a downstream user. Non-EU companies are able to pre-register and register their substances by using an "only representative". Only representatives are able to carry out the legal requirement of REACH and act as legal entities in the EU for non-EU companies. The advantages are that the non-EU manufacturers maintain ownership of their substances and are able to better control the process of registration. Unfortunately, there are additional costs by pre-registering this way due to liability insurance that is taken out by the only representative, and consultancy fees.

I have travelled to a number of the company's suppliers in China, the US and Canada to explain REACH and to try to help them understand the necessity to act and take on an only representative. Happily, at time of writing, most of our non-EU suppliers have understood the need to adopt this strategy thus meaning our status of importer is effectively changed to that of downstream user.

Where we have not been able to gain this commitment the company has had to decide either to pre-register as an importer or withdraw the substance in question. The legislation allows for us to continue to supply up until the registration period. Pre-registration is relatively simple to do and therefore it is a general rule that the company will pre-register to allow us to continue supplying for the time being. We will be in a better position to decide on the fate of a handful of substances nearer the time of registration.

I will also be pre-registering and registering all relevant substances that are manufactured by our manufacturing site.

Customer enquiries

Over the past two years I have received a huge number of letters, forms and general enquiries on REACH from our customers. I have attempted to answer all of these within a reasonable time frame and, in most cases, I have been successful. Unfortunately, it has not always been possible to answer some questions due to



discharge. REACH is not often linked with good news.

With only a few months to go before pre-registration I recognised that the volume of inquiries was reaching a point at which I was prevented from taking the time to actually ensure the company was ready for pre-registration etc. I decided that we should send out a standard reply email explaining our policy and directing our customers to our website to view the status of the materials they were purchasing. This seemed to be generally accepted as I pointed out in the email that the information on the website was updated daily and was as full as possible. I further explained that any product withdrawals, while highly unlikely, would be handled with the utmost care and as much notice as possible would be given.

the amount of detail required. In some cases it has become apparent that the customer does not fully understand the legislation and I have had to explain it. In some very rare cases the customer company has been concerned that it has a duty to pre-register and register substances when, in fact, its duties are far less onerous. It is a rare and wonderful thing to be in a position to explain that responsibilities are relatively easy to

The future

At the time of writing this article there are still a number of unknowns. There is some confusion over whether Annex IV is being revised. There are ambiguities over whether some materials are exempt as “naturally derived” or whether they should be pre-registered “just in case” etc. IUCLID5 is not fully working and I believe the solid gold taps in the ECHA washrooms are yet to be fitted.

It seems that we will have to take a “wait and see” approach to REACH. Most importantly we should be able to pre-register all the substances required and our suppliers are, in most instances, ready for the pre-registration phase too.

Once the pre-registration phase has been completed it will be extremely interesting to see how the SIEFs work and how long-term competitors are going to be able to work together. The issues of data sharing versus the strict laws in the European Union regarding anti-competitive practices will also come under some scrutiny.

Testing and whether the ECHA will adopt a strict approach to data produced, or already available, is another question that is yet to be answered. I would hope that the ECHA will take a more pragmatic approach and, where, possible, look to the “spirit” of REACH rather than the letter of the law.

I must confess that I never thought legislation would be this interesting. The future will certainly keep me and many others extremely busy dealing with compliance. Either way REACH is here to stay and the next few months and years will undoubtedly cause a great deal of consternation, confusion and hopefully may even make our little planet a slightly safer place in which to live. **PC**