



EU-Commission
Env. D1 – Chemicals
Entr. G1 – REACH

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ESRG-Response and Statement of Concern regarding the 4th Meeting of the Competent Authorities for the implementation of Regulation (EC) 1907/2006 (REACH); Item 6: Waste and Recovered Products

Dear Mrs. de Avila,
Dear Mr. Linher,

we are writing as a concerned European trade group that guidance suggested in the above paper may inadvertently damage both investment and the long term viability of the chemical solvent recovery business sector.

These concerns focus on the implications of proposing that solvent recyclers adopt manufacturer status and of the current recommendation to pre-register. In turn, we believe these policies lead to disproportionate involvement, commercial risk and associated costs in the next stages of the REACH processes.

1. Background

- 1.1 The European Solvent Recyclers Group (ESRG) is the European trade association for solvent (or more generally for chemical) recyclers. Amongst its members are Europe's largest leading organic chemicals solvent recycling companies. Its members' recover a wide range of materials for reuse thus minimising waste and maximising the use of resources. The member companies support the EU chemical, pharmaceutical, printing and coatings industries amongst many other industrial users of organic solvents. We estimate that annually our industry manages over one million metric tonnes of hazardous waste for reuse as a non waste resource in support of the Waste Framework Directive 2006/12(EC) and importantly the 6th Environmental Action programme (6 EAP).
- 1.2 Organic solvents are safely and efficiently recycled in major industrial facilities. The process is in simple terms one of distillation, which utilises chemicals' different boiling points to extract the original substance from the contaminants that made it waste. The resulting recycled substance is subject to strict quality

control before being sold back into industrial use, often to the same Downstream User for the same use, thereby closing the recycling loop.

- 1.3 As virtually all such chemicals are hazardous (e.g. flammable, irritant, corrosive and/or toxic) Council Directives 96/61(EC) (IPPC) and in most cases 96/82(EC) (COMAH) apply to the recycling process. Full chemical analysis of both the wastes and the recycled substances are a requirement to operate safely and Safety Data Sheet information for the substances to be recycled is a further minimum requirement. In the heavily regulated area of industrial chemical processes these are readily available to the recyclers and form an absolute minimum information requirement before even a laboratory pilot scale recycling process is attempted.
- 1.4 ESRG member companies have been involved in REACH guidance from an early stage, taking part in relevant RIP Task Groups and developing a waste lifecycle emission calculator tool for use in the development and assessment of exposure scenarios.

2. General Comments

- 2.1 It is noted that the Commission's presentation gave special consideration to certain recovered materials (metals, aggregates, compost, glass, paper and plastics covering many streams that will anyway include existing exemption from REACH under Annexes IV or V) but it did not specifically consider recycled chemicals.
- 2.2 Solvent recycling arguably offers the best example for Article 2 (7) (d) exemption.
 - (i) *The substance resulting from the recovery process is the same...* This is a process requirement and is ensured by process design and full chemical analysis.
 - (ii) *The information required...is available to the establishment undertaking the recovery.* This is a pre-requisite for the safe processing by distillation of hazardous chemicals. The relevant safety information is made available by the industrial waste producer.

Generally speaking the most commonly used solvents / chemicals that are recycled by distillation are high volume, multi-purpose substances. ESRG forecast that all these substances will be pre-registered for both phase in and registration purposes by the 30 November 2010 deadline, due to their production volumes. Further, we maintain that unless they are pre-registered by 30 November 2008, much of the EU chemicals industries would then face a crisis situation, and implicitly, the solvent recovery business would be in both disarray and decay.

ESRG foresee no authorisation issues for these substances.

- 2.3 Although the full consideration of waste and recycled products is a welcome development, its late timing is of concern. The response to one ESRG member company received from the Commission (Ms. Yvonne Slingenberg, Head of Unit, DG Environment, Env.D.1 – Chemicals, dated 26/01/2007) provided general answers which did not lead the ESRG members to the same interpretation of the Regulations that is being proposed in the current paper.

2.4 Our own proposed REACH compliance programme for Article 2 (7) (d) exempted substances has long been developed and in some cases its implementation is well underway. **Our compliance approach is as follows:**

- 2.4.1 Communicate to each waste producer to ensure their supplier/manufacturer knows that waste lifecycle includes recycling by distillation.
- 2.4.2 Communicate to each waste producer to require REACH substance information to be passed to the recycler.
- 2.4.3 On the first publication of a list of pre-registered substances (January 2009?) the recycler to verify that all recycled products have indeed been pre-registered.
- 2.4.4 Request use information from recycled product customers (Downstream User).
- 2.4.5 Upon full registration (and authorisation if required) ensure each recycled substance is the same. Minimum purity 80%, other impurities assessed and no other risk or safety phrases introduced by virtue of different impurities.
- 2.4.6 Upon full registration (and authorisation if required) verify that the recycled product downstream use is indeed registered.

We advise that communications to this effect have already been sent out to hundreds of waste producers and recycled substance users across Europe.

3. Specific Comments

3.1 Manufacturer Status:

ESRG **disagree with the proposed interpretation that a recycler** qualifying for an Article 2 (7) (d) exemption **should be treated as a manufacturer** under REACH. The following objections to this interpretation are exemplified below:

- 3.1.1 Preamble 11 to the REACH Regulation clarifies the spirit in which the regulations are drafted: *To ensure workability and to maintain the incentives for waste recycling and recovery, wastes should not be regarded as substances, preparations or articles...*

Hence to agree that wastes are outside the scope of the Regulations but then to require the recycler's operations to be within the scope of the Regulations (as a manufacturer) negates any incentive to recycling that was originally intended. By definition, the recycling process described above deals with materials outside the scope of the regulations and results in a product exempt from the regulations. In this scheme there is no requirement for manufacturer status. The unnecessary application of manufacturer status would place undue burdens on the recyclers that then go against the intention of the Regulations to maintain an incentive for waste recycling and recovery.

- 3.1.2 To require recyclers to take on REACH Manufacturer status puts the REACH interpretation into a legal conflict with Directive 96/61/EC (IPPC Directive) Member States implement Article 1 of the IPPC Directive by classifying the recovery by distillation of any oil or organic solvent as a "Recovery of Waste" activity under Annex 1 Schedule 5 of said Directive. If solvent recyclers are to

be classed as Manufacturers then they should be regulated under Schedule 4.1 “Chemical installations for the production of basic organic chemicals”. In other words the solvent recycling companies are not currently permitted to manufacture chemicals in the current definition of manufacturing provided in Article 3 (8) of the REACH regulations.

- 3.1.3 Irrespective of the IPPC Directive issue, ESRG fundamentally disagree that solvent recycling by distillation meets the legal definition of manufacturing as defined in Article 3 (8) of the REACH Regulations.
- 3.1.4 It is the interpretation of ESRG that solvent recyclers who recycle waste substances which would be able to qualify for an Article 2 (7) (d) exemption are neither Manufacturers nor Downstream Users. It is the express intention of REACH Regulation (EC) 1907/2006 to leave such waste recycling activities outside of the scope of the Regulations for these are legally managed under the Waste Framework Directive 2006/12(EC).
- 3.1.5 ESRG members contend that for recyclers to adopt manufacturer status would introduce the potential for anti competitive behaviour by prime manufacturers.

3.2 Pre-Registration Recommendation:

ESRG **disagree with the proposed interpretation that a recycler** qualifying for an Article 2 (7) (d) exemption **should pre-register**. The following objections to the proposed interpretation are exemplified below:

- 3.2.1 Although the Article 2 (7) (d) exemption does only apply to substances *which have been registered*. It is ESRG’s view that the pre-registration process is in effect part of the process for achieving registration (*of existing substances*) and that the implicit intention is to exclude substances which have been pre-registered in the same manner as substances which have been registered.
- 3.2.2 Any other interpretation appears irrational in the context of pre-registering a substance with the express intention of then not registering it.
- 3.2.3 It is ESRG’s understanding that a pre-registration submission is some indication of a potential registrant’s intention to register. For substances already pre-registered and for which an Article 2 (7) (d) exemption would apply, the recycler would not then be a potential registrant and would have no intention to register. Should the case arise that no manufacturer or importer register a currently recycled substance then this activity would become redundant as a recyclable waste stream, as the substance would no longer be on the market or be subject to very special controls. ESRG foresee no circumstance where a member company in its own right would wish to register such a substance.
- 3.2.4 It is ESRG’s understanding that only Manufacturers or Importers can pre-register and register substances. As described in points 3.1.2 – 3.1.4 solvent recyclers not only do not meet the legal definition of either manufacturer or importer nor are they permitted under Directive 96/61/EC to manufacture (i.e. to produce) substances.

3.2.5 ESRG understand that the costs and time commitments of the pre-registration process as they would apply to a Recycler have not been subjected to an impact assessment and ESRG therefore express a strong concern that these may be vastly underestimated. Two points should be noted, the first is that many recyclers are currently recycling up to 50 individual substances and some currently recycle significantly more than this. The second point is that to ensure the continued competitiveness of the solvent recycling industry against in particular disposal by incineration, the recyclers would also have to pre-register any substance they *may* recycle between November 2008 and November 2010. The waste industry must continue to be in a position to react quickly to new waste streams being generated and to this end most solvent recycling plants are purposefully designed to offer large flexibility. Their capabilities are not limited to *currently recycled* substances. For these two reasons pre-registration would effectively be required for hundreds of substances. In addition to this costs of pre-registration there would also be the time commitment and costs in SIEF management. This would include the invitation for participation, taking legal advice as required in the following areas:

- Management of SIEF framework and rules of engagement
- Scope and Duration
- SIEF membership conditions
- Competition Law Compliance
- Management of requests for information
- Cost sharing, data ownership and data access rights
- Defaulting / withdrawing members
- New joiners
- Resolving disputes

3.2.6 It is ESRG's position that there is no added value in terms of REACH compliance in requiring pre-registration for recycled substances which would qualify for an Article 2 (7) (d) upon registration. Furthermore the burdens placed upon the solvent recycling industry in this approach are not in keeping with the express intention of the REACH Regulations specified in preamble 11.

3.3 Conclusions:

3.3.1 ESRG maintains that both Manufacturer status and pre-registration proposals are incorrect and unnecessary interpretations of the REACH regulations. We suggest that compliance can be achieved by the approach outlined in our section 2.4 above and that we would work with Competent Authorities to achieve that goal.

3.3.2 ESRG supports other approaches and interpretations presented in the Commission's document and in particular the confirmation of the irrelevance of the direct supply chain in substance registration requirements and definitions of impurities. Without these critical clarifications the recycling industry would be severely impacted.

3.3.3 A final concern is the lack of consideration of documentation to accompany recycled products. ESRG would appreciate clarification of what (if any) REACH documentation should be provided by the Recycler. For example would any

registration document for the relevant substance be sufficient and should the Recyclers details appear anywhere on such documentation?

3.4 Recommendations

(a) We respectfully submit that solvent recycling industries regulated under IPPC Directive 96/61(EC) and meeting the full recovery conditions of the Waste Framework Directive 2006/12(EC) are not required to be either a manufacturer or to pre-register.

(b) Our proposals listed under Section 2.4 are adopted as the basis for underpinning Article 2 (7) (d) of the REACH Regulation.

With kind regards

European Solvent Recycler Group

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Chairman ESG

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