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REACH – preparing for the next step

Regulatory

Abstract

New REACH legislation will come into force on 31 May 2013, requiring companies that manufacture or import phase-in substances (i.e. those already pre-registered) in quantities above 100 tonnes/year to register their chemicals and be fully compliant. The legislation has brought with it a raft of additional administrative requirements and challenges, notably the requirement to demonstrate compliance and – most importantly – prove it should any legal action arise.



New REACH legislation comes into force on 31 May 2013. Malcolm Carroll, Director of Reach Delivery, looks at its impact and the challenges ahead for manufacturing companies.

A recent European Commission report highlighted how much safer the use of chemicals in Europe has become since REACH regulations came into force five years ago. The uses and properties of 7,884 chemical substances manufactured or available on the market are now registered with the European Chemicals Agency (ECHA) – meaning that the risks from these substances have been greatly reduced.

However, with the next REACH landmark due to be implemented by 31 May 2013, there are many companies that are not aware of how new EU laws governing hazardous chemicals will affect them. The new regulations state that companies that manufacture or import phase-in substances (i.e. those already pre-registered) in quantities above 100 tonnes/year will need to register their chemicals and be fully compliant.

Research from the UK manufacturers' organisation EEF revealed in January that 20% of companies think REACH is not applicable to them and a further 30% say it is not important to their business. This is worrying because the new legislation brings even tighter European controls on the manufacture, movement and use of dangerous or hazardous chemical products.

New responsibilities

Manufacturing companies have been widely affected by the phased introduction of REACH over the past five years as it applies to chemicals manufactured, bought or imported, used in any stage of production, or sold within the EU. The purpose is to protect and inform the workers, end users and customers who come into contact with hazardous substances at all stages of the supply chain, and the industry as a whole places great emphasis on the often diverse use of its products. However, this legislation has brought with it a raft of additional administrative requirements and challenges.

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One of the main challenges is the shipping of chemicals, in particular the requirements for documentation in the supply chain. Under REACH, the responsibility falls firmly on suppliers to ensure that their customers are supplied with Material Safety Data Sheets (MSDSs), exposure scenarios (ESs) and other critical safety information, often with the requirement to actually deliver and update at regular intervals, rather than simply sending these documents. In addition, the requirement to ensure that all internal personnel who may come into contact with hazardous materials are also provided with the most current MSDSs, ESs, etc. has increased the amount of record keeping required, along with other time-consuming tasks.

To compound these challenges, there has been a wave of new REACH-type health and safety regulations being established outside the EU – in China, Korea, Turkey and Switzerland. There have also been changes to domestic health and safety legislation – for example, in the US with updates to OSHA, Hazcom and EPCRA.

What these regulations have in common is the emphasis that they place on manufacturers and distributors providing more information about chemicals and their properties within MSDSs and ESs and ensuring that these documents and any other critical information are delivered directly to customers.

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It is not always enough simply to send information in the post or by email as this only assumes they have reached the customer. There is often a need to implement the resources, systems and processes required to ensure the actual delivery of the documents to achieve compliance.

Another common element of these international regulations is the need to ensure that all employees within companies that may come into contact with hazardous materials are provided with the most current MSDSs and ESs to ensure the use of chemicals is consistent and safe. To comply with these regulations chemical companies and downstream users worldwide must now consider not only how they maintain compliance but also how they can demonstrate their compliance and – most importantly – prove it should any legal action arise.

To do this companies will need to have easily retrievable records and preferably audit trails of the MSDSs and ESs that have been sent and received by customers and their own staff. They will also need to demonstrate that new or updated documents have replaced previous versions both internally and externally, as well as maintaining past versions and, in many cases, records that demonstrate compliance, for more than 30 years.

The additional workload in administration can be significant and needs to be anticipated. Furthermore, automated systems that address this workload need to be implemented by many smaller SMEs now.

Overlapping directives

To add further complexity to the situation, there is a legislative overlap, mainly because the new international legislation has to co-exist most commonly with domestic health and safety directives. The supply and delivery of Safety Data Sheets (SDSs), for example, will be addressed often in more than one legal requirement. For example, the UK COSHH (Control of Substances Hazardous to Health) sits alongside REACH with both calling for risk assessments and utilising the information in SDSs.

Under EPCRA Section 313 in the US, chemicals suppliers must notify customers of any hazardous chemicals present in mixtures or other trade name products that are distributed to facilities. The notice must be provided to the receiving facility and may be attached or incorporated into that product's MSDS. If no MSDS is required, the notification must be in a letter document that contains specific information and accompanies or precedes the first shipment of the product to a facility.

MSDSs are also covered by the OSHA regulations. These regulations are aimed at making sure that the hazards of all chemicals imported into, produced or used in US workplaces are evaluated and that employees are given information about these hazards. OSHA requires all manufacturers, importers and distributors of hazardous chemicals to provide the appropriate labels and MSDSs to the employers (companies) to which they ship these chemicals. The revisions to the Hazard Communication Standard (HazCom 2012) have tightened up this legislation still further.

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Every container of hazardous chemicals sent must be labelled, tagged or marked with the required information, accompanied by an MSDS at the time of the first delivery. Any updates must also be sent to the customer. MSDSs must be readily accessible to employees when they are in their work areas during their work shifts.

The Workplace Hazardous Materials Information System (WHMIS) is Canada's national hazard communication standard. This communication standard addresses workers' 'right to know', insisting that the MSDSs are readily available to workers who may be exposed to a controlled product. In Japan, the CSCL, PDSCL and PRTR legislation outlines specific requirement for information delivery throughout the supply chain.

In Korea, the standard for classification and labelling of chemical substances and MSDSs requires not only that the supplier should provide an MSDS to the customer, but also that the recipient has an obligation to provide a confirmation of receipt back to the sender. Similarly in China, 'China GHS' requires that MSDSs are communicated to downstream users and that updates are provided as new information on hazards arises.

Australia's Model Work, Health & Safety sets out the obligation to prepare and maintain up-to-date information on an SDS, and to provide it to all customers or any person likely to be affected by a chemical.

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Thus, the issue of how MSDSs should be supplied and delivered to customers is being addressed in more than one piece of legislation. The requirements can vary globally, although many of the newer rules are, as was expected, far more stringent. One thing is clear: global legislation is moving in the same direction as REACH and the onus is firmly on suppliers to ensure their customers are supplied with MSDSs, ESs and other critical safety information. Often, there is a requirement actually to deliver, rather than simply send, these documents.

Automation for easy compliance

There is also a need to ensure that all personnel within an organisation that may come into contact with hazardous materials are provided with the most current MSDSs and ESs and are using chemicals safely, consistently and correctly. The need for systems to aid and automate this process is very clear.

One such system is the new REACH Delivery 2013 edition, which is designed to enable companies to comply with all relevant international and domestic legislation easily and cost effectively. This system supports the sending, receiving, internal distribution and automated update of MSDSs and associated documents for large and small companies alike. It meets the various legislative requirements by guaranteeing delivery and monitoring and auditing actual receipt by customers and staff, as well as ensuring that the latest version of the document is always available.

Peace of mind

Companies around the world are using this system to automate the sending and updating of their documents, although their customers can still receive them by email, or they too can use REACH Delivery to receive – and send – their documents. Either way, they are able to monitor, track and report on the process, while retaining a delivery status on all documents sent to and received by their customers.

To demonstrate compliance or in the event of a dispute, users will always be able to access complete audit trails (with time and date stamps, version numbers, etc.). The saving in time and cost of administering MSDSs and other important documents under the new legislation is considerable.

Compliance with REACH 2013 and other health and safety legislation is a challenge that many organisations are now facing but with the right systems in place companies can have peace of mind that they are compliant in terms of the delivery of critical safety information to their customers and staff.

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