

REACH: Are You Ready? Understanding the European Export Challenge

As 30 Nov 2008 approaches, the global chemical industry is bracing for some sweeping changes related to the European Union's new chemical control legislation known as REACH (Registration, Evaluation and Authorization [and Restriction] of Chemicals). On that date, the pre-registration period for REACH will close. Additive suppliers and oil and fuel marketers alike are working to understand these complex regulations and prepare accordingly. Not surprisingly, there are some common misperceptions out in the marketplace. Separating truth from fiction and understanding the options will keep you, and your business, ahead of REACH.

The Reality About REACH

Most European lube and fuel marketers are familiar with the rules and implications of REACH, but many non-EU and global companies are still coming to terms with the new requirements, especially related to exports to Europe.

- **Perception:** I have plenty of time. REACH is a voluntary activity with a 10 year phase-in period. I don't really have to do anything about it until 2018.
- **Reality:** No, you don't have a lot of time. Pre-registration of the substances you manufacture in the EU and/or are present in product(s) you import into the EU is required by 30 Nov 2008 in order to take advantage of the 10 year phase-in period of REACH. In fact, if the substances used in your product(s) are not pre-registered by the appropriate party in your supply chain by November 30, you will not be in compliance of REACH. This could have a severe commercial impact on your business because you will be required to stop production and/or importation until full registration has been completed. If required, full registration will delay your business for many months and, depending on volume, it could cost between an estimated \$100,000 and >\$1 MM per substance contained in your product.
- **Perception:** Other companies have pre-registered this substance, so I'm not required to do so.
- **Reality:** It doesn't work that way any more. Prior to REACH, lubricant and fuel marketers who purchased substances listed on EINECS were free to blend those substances outside of the EU and export unlimited volumes of product into the EU.

As of 30 Nov 2008, if you are exporting a product into the EU, each European importer must hold a valid pre-registration for the chemical substances contained in your product(s) that are imported at ≥1 metric ton per year, unless they are exempt. The only alternative to this is using an 'Only Representative.' (More on the next page.)



Lubrizol Additives

- **Perception:** As long as my additive supplier has pre-registered the substances in their products, then my company is free to export it into the EU.
- **Reality:** Even this is false. The REACH responsibility for the product you export lies with the actual EU importer, not the EU affiliate/subsidiary of your supplier (who will not be the EU importer of your product in most cases). This creates a supply chain conundrum. In order for an EU importer to meet REACH obligations, they will need to know the detailed product composition including chemical names, EC numbers and concentrations of all ingredients in the product they import. Without this information the EU importer will be unable to pre-register each substance and track its volume. This presents a significant issue for non-EU additive suppliers because compositional disclosures beyond those required on Safety Data Sheets are considered trade secrets and are typically not shared within the supply chain.

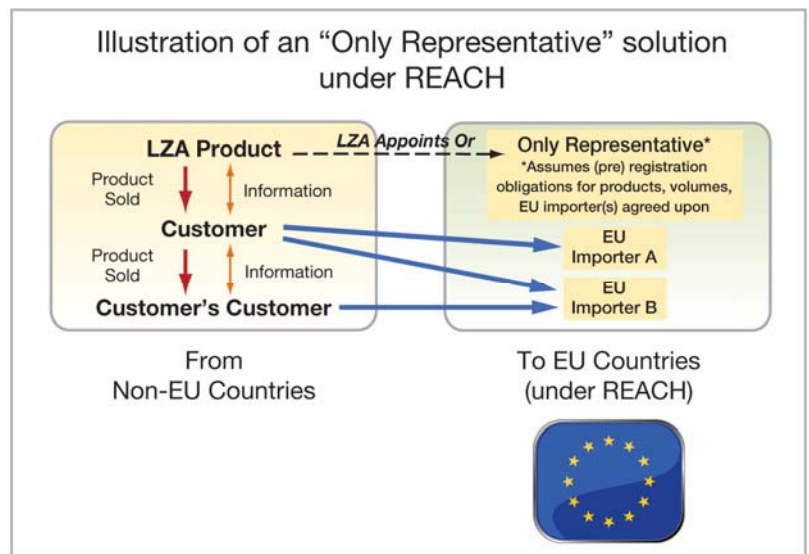
The Additives Industry Reacts To REACH

The additives industry recognizes that REACH has created a challenge for non-EU customers who export their products or formulations containing petroleum additives to the EU. Consequently the industry has been working together through the Technical Committee of Petroleum Additive Manufacturers (ATC) to develop a harmonized approach for one possible solution for this supply challenge, namely appointing an *Only Representative (OR)*.

A non-EU manufacturer or formulator cannot, by themselves, (pre) register a substance. They can appoint a legal entity within the EU called an *Only Representative* to assume legal responsibility for the (pre) registration of the substances in the imported product. The EU company that actually imports the product then has no legal responsibility for (pre) registering the substance(s) because in this situation they are considered a 'downstream user' under REACH.

By appointing an *Only Representative* for the substance(s) in the product, your supplier effectively removes any REACH (pre) registration burden from the EU importer (i.e. your customer). However, this is **conditional** on you directly informing either your supplier or the *Only Representative* which products are exported to EU, the annual volume and the identity of each importer in the EU.

To ensure that all the necessary information is brought forward, a simple document known as a Declaration of REACH Conformity (DRC) is also being proposed by the ATC. The DRC (or equivalent document) would move along the supply chain with the product (in the same way that a Material Safety Data Sheet does today for example). Each actor in the supply chain would collate the REACH conformity (compliance) information communicated on the DRC(s) received from their supplier(s) and then use this information to prepare a new DRC for their customers. The DRC includes details of the *Only Representative(s)* responsible for substances contained in the product. This satisfies the compliance requirements of the importer(s), while allowing non-EU manufacturers/formulators to protect the exact chemical identities of the substances and, if they wish, the identity of their supplier(s).



*The role and function of the *Only Representative* is discussed in more detail in the *Guidance on Registration (ECHA, May 2008)*

Other Solutions

There are also other solutions available including changing your additive sourcing from outside the EU to a plant within the EU. But any way you cut it, exporting products into the EU under REACH will not be business as usual after 30 Nov 2008.

Will REACH Impact You?

If no one in your supply chain purchases raw materials from EU suppliers or exports to the EU, there is no REACH impact on your business.

However, if any of the following scenarios apply to you then REACH may impact your business and you and/or your importer may have REACH obligations:

1. You export ≥ 1 MT per year of product directly to a customer in the EU.
2. You sell product to a non-EU based customer or distributor who exports ≥ 1 MT per year of product to a customer in the EU.
3. Your EU-based affiliate buys directly from a non-EU supplier.
4. You use raw materials produced in the EU. (This is not necessarily a problem, but you should make sure the raw material will be available from your supplier after the pre-registration period ends).

These scenarios are not the only ones where you could have REACH obligations, but they are the most straightforward ones for you to quickly assess and act upon.

The Bottom Line On REACH

Unless your non-EU supplier is helping you take care of REACH pre-registration obligations, the products you export to the EU today may no longer be in compliance in the EU after 30 Nov 2008. At Lubrizol, we have several options available to help you deal with the implications of REACH and keep you in compliance. Please contact your Lubrizol sales representative for more information.