Enforcement implications arising from Brexit

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About CHEM Trust

• A charity working mainly at EU level to protect humans & wildlife from harmful chemicals
• Working with scientists, technical processes and decision makers, in partnership with other civil society group
• Focus on identification of, and action on, endocrine disrupting chemicals
• See our blog & twitter for more: https://chemtrust.org @chemtrust
The BREACH system

• As a result of Brexit – and not making a deal with the EU to stay in REACH – UK has had to create its own regulatory system
  – System covers England, Wales and Scotland = “Great Britain”
    • Northern Ireland remains in EU REACH, as agreed in Withdrawal Agreement
  – CHEM Trust has called for the UK to negotiate to stay in REACH - https://chemtrust.org/brexit/

• British REACH (BREACH) duplicates many aspects of EU REACH, with less capacity & expertise, starting with an empty database
  – All existing regulatory measures under REACH remain in place;
    • One big question is what happens with future EU measures, legal changes etc
• Registration in BREACH is the first enforcement challenge…
Registration in BREACH

• Existing REACH registrants (‘grandfathering’):
  – ‘Basic information’ to UK HSE by 30th April 2021
  – Timeline for full registration information currently being extended:
    • UK plans timeline of 2, 4, 6 years from 28th October 2021, using tonnage etc bands similar to original REACH phase-in (originally BREACH law said all data in 2 years)
    • We have pointed out that this means data gathering in the UK system will be more than nine years behind EU REACH (compared to 2018 REACH registration deadline).
      • [https://chemtrust.org/uk-breach-crisis/](https://chemtrust.org/uk-breach-crisis/)

• New registrations for GB use must be registered in BREACH
• UK guidance: [https://www.gov.uk/guidance/how-to-comply-with-reach-chemical-regulations/](https://www.gov.uk/guidance/how-to-comply-with-reach-chemical-regulations/)
Enforcement of BREACH registration

• Every element of BREACH registration (and the rest of BREACH itself) is in addition to EU REACH
  – The only incentives for companies to grandfather and register are a wish to follow the law and the fear of enforcement action.
  – There are no business, health or environmental benefits to BREACH

• Is the UK’s enforcement capability strong enough to ensure compliance with BREACH registration?
  – If not, then BREACH is just a theoretical system.

• Better approach in CHEM Trust’s view:
  – UK decides to align with EU REACH, then negotiates with EU for access to REACH data, see https://chemtrust.org/uk-proposals-eu-chemicals/
How good is UK enforcement?

- In the UK local authorities are responsible for most enforcement activity on chemicals in consumer products like toys etc.
- In 2018 CHEM Trust used Freedom of Information requests to ask what checks councils had been doing:
  - 35% of councils said they had tested no products in the last five years
  - Of those which had done tests, 52% of councils found breaches of legal limits
- This study demonstrated a clear lack of funding and prioritisation at a national level
  - Details: https://chemtrust.org/uk-chemical-regulation/
- A new study from ‘Unchecked”, published in August 2020, found very similar results:
  - https://www.unchecked.uk/research/investigation-chemicals/
The Northern Ireland Protocol (NIP)

- Part of the Withdrawal Agreement (WA) between the EU and UK, signed in January 2020
  - Article 5(4)
    - “The provisions of Union law listed in Annex 2 to this Protocol shall also apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland”
  - Annex 2 includes:
  - Northern Ireland remains in REACH, e.g. companies can register chemicals in REACH, restrictions and authorisations apply etc
How can REACH work in NI?

- Detail to be negotiated by “Joint Committee”
  - Currently no public communication on any outcomes

- Key issues:
  - Will NI authorities have the resources to enforce REACH?
    - NI has poor record for implementation & enforcement of EU environmental policies and regulations
    - NI now going to be operating one of the most complex regulatory/customs regimes in the world – how?
  - How will NI authorities get access to confidential REACH data in order to enforce it??
Brexit has also affected EU REACH

• The removal of the UK from the REACH system has also had some impacts on REACH
  – E.g. transfer of substance evaluations from the UK to other countries

• One substance evaluation that has been transferred illustrates the failure of REACH substance evaluation to work effectively
  – Including the opportunities for registrants to delay action, and the lack of enforcement of deadlines….
DBDPE – polluting the world

• Decabromodiphenylethane (‘other Deca”) widely used as flame retardant
  – On ChemSec “SIN list” since October 2014: https://sinsearch.chemsec.org/chemical/84852-53-9

• Well established contaminant of wildlife – from dolphins and pandas to…
  – Polar bears in the Arctic, published in 2013 [1]
  – Faeces from wild howler monkeys in Costa Rica, and wild chimpanzees in Uganda, just published [2]

• In our homes, offices, schools and bodies - e.g. Irish studies in 2019:
  – “Median concentrations of DBDPE in air (88 pg/m3) and dust (6500 ng/g) significantly exceed those previously reported internationally” [3]
  – Detected in three pooled breast milk samples taken in 2016-2018; was not found in an equivalent study in 2011 [4]
Substance evaluation of DBDPE

• Substance evaluation started in February 2012, led by UK HSE
  – Initial grounds: Suspected PBT/vPvB, High (aggregated) tonnage, Wide dispersive use
  – UK HSE prepared draft decision asking for more data on persistence, bioaccumulation and toxicity, submitted to ECHA in February 2013
  – Draft decision consulted on and discussed by Member State Committee, backed in Feb 2014
  – Agency adopted decision in May 2014, requiring more data by November 2016

• August 2014 Albemarle and ICL-IP appeal against request for more data
  – July 2016 ECHA Board of Appeal largely upheld request for more data, sets a new delivery date of 19th January 2019 [5]

• Evaluation transferred to KEMI in Sweden due to Brexit
  – At the time of writing (20 months after deadline), KEMI still waiting for bioaccumulation data

• No enforcement action taken against registrants for late delivery of data
  – Eight years on, there has been no risk management under REACH for DBDPE
Substance evaluation isn’t working

• The Substance evaluation process is easy to manipulate
  – Challenging any requests for new data gives the registrant a few extra years
  – Dates to deliver data don’t seem to be enforced (are there any examples of successful enforcement?)
  – We continue to have the problem that No data = no problem

• We need action on this chemical (and others), e.g.
  – Accelerated listing as a vPvB/PBT substance of high concern
  – An investigation of whether it is possible, with available data, to start a restriction process

• This chemical is contaminating the world, something REACH was supposed to prevent (at least in the EU)
Conclusions & actions

• **BREACH creates new demands on industry**
  – The only benefit of this system to industry is continued market access to England, Wales and Scotland
  – There are no environment or health benefits of BREACH; in reality it is likely to fall behind REACH on controls of hazardous chemicals, due to lack of data and capacity

• **UK does not have a got record on enforcement**
  – UK has a poor record of enforcement of laws on chemicals in products, and there is little sign of this improving, but without enforcement BREACH registration is unlikely to work.

• **There is a lack of clarity about the how the NI protocol will work**
  – Less than 100 days until implementation day, 1st January 2021

• **Substance evaluation isn’t working**
  – Shocking that DBDPE is still on the EU market, with no risk management, despite evidence of global contamination of wildlife and humans
References


