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Protecting humans and wildlife from harmful chemicals

Enforcement implications arising from Brexit

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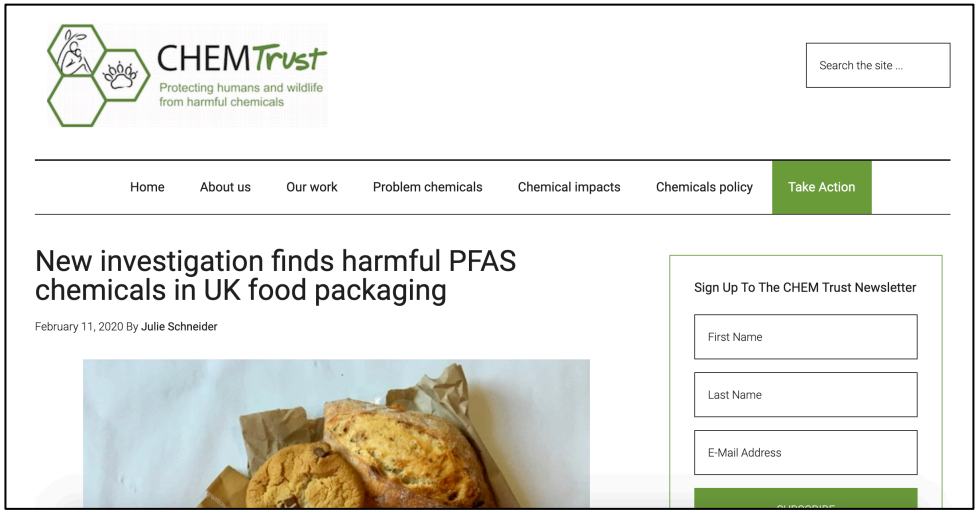
About CHEM Trust

- 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



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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…**

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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/
- **New registrations for GB use must be registered in BREACH**
- **UK guidance: https://www.gov.uk/guidance/how-to-comply-with-reach-chemical-regulations/**

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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/

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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/

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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:
    - *Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)…*
- **Northern Ireland remains in REACH, e.g. companies can register chemicals in REACH, restrictions and authorisations apply etc**

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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??**

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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….

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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]

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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**

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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)**

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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

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References

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[5] ECHA Board pf Appeal Decision, 12 July 2016 https://echa.europa.eu/documents/10162/e0251bb3-1c55-4bfc-b134-2c108d101dad