



ILT

Postbus 16191

2500 EH Den Haag, The
Netherlands

www.ilent.nl

Contact persons

Janine Killaars, Peter Hellema, Chiel
Bovenkerk

T +31 (0) 652096892 / +31 (0)
652050187 / +31 (0) 652043750

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memo

REACH and Administrative Obligations for Tank Storage Terminals and Traders of Fuels

Introduction

The Human Environment and Transport Inspectorate (Inspectie Leefomgeving en Transport, ILT) in the Netherlands performs inspections, among other tasks, of tank storage terminals and traders that are active in the fuel chain. The tank storage terminals store substances for third parties (often traders), blend substances in the tanks on the instructions of the lessees of these tanks (who are often also traders), and unload and load substances from and into tanks and ships. This memorandum explains the obligations of these companies within the scope of the REACH Regulation¹ and the Environmentally Hazardous Substances and Preparations (Administration) Decree, and the role that they play in the chain.

REACH

Refining processes: the basis of fuel oil

Refining petroleum produces various products containing a large variety of substances. In REACH, these products are defined as UVCB substances (substances of **U**nknown or **V**ariable composition, **C**omplex reaction products or **B**iological origin). Under REACH, these products are considered to be one substance, even though they consist of various individual substances in a variable composition.

In addition, refineries can blend certain distillation cuts—registered separately as UVCB substances—as an integral part of the production process, into a new UVCB with a distinct and unique registration. As long as this is done in the refinery where the substances are produced, this will be considered as the production of a substance under REACH (the “refinery blending exemption” from the letter of ECHA to CONCAWE 2).

¹ REACH Regulation EU/1907/2006

However, when this blending of UVCB substances takes place after they have been placed on the market (see Art. 3 (12) of REACH), then there is no production of a substance. In that case, it concerns a blend³ of various UVCBs. Such a blend cannot be designated as a substance with a single registration number.

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Stated succinctly, the products leaving the refinery are in most cases UVCB substances that bear a registration number as a substance. Petroleum products that are compounded from various substances (UVCBs or not) are blends.

Blend materials

Because fuel oil that comes from the refinery can in most cases not be used directly as fuel for ships, substances are added to change its properties. Consideration should be given in that regard to lowering the viscosity, improving the stability or lowering the ignition point. These blend materials can be regular flows or lots that are bought on the so-called spot market.

Tank storage terminals (blenders)

A tank storage terminal is an enterprise providing storage of fuels or chemical products. Storage capacity is usually leased to third parties. The tank storage terminal receives products from various parties that end up in tanks, in which a blend is compounded or blended on the specifications of the substances' owner. Tank storage terminals are therefore also referred to as "blenders".

The owner of the substances and lessee of the tanks is usually a trader.

Tank storage terminals receive several products (fuel oil, blend materials) of various compositions. These compositions consist of:

² See letter CONCAWE 7/5/2008 JN/jeD2008/719, enclosed as annexe

³ Blend: a mixture or solution consisting of two or more substances

1. A UVCB substance with a registration under REACH;
2. A blend of UVCB substances of which the individual UVCB substances have a registration under REACH;
3. A blend of a clearly defined substance and a UVCB substance or substances, of which the substances are registered under REACH;
4. A clearly defined substance with a registration under REACH;
5. A blend of clearly defined substances, in which the individual substances are registered under REACH;
6. Recovered substances. Waste that has been processed causing it to reach the “end-of-waste phase” and can be used efficiently;

Tank storage terminals are not permitted to receive waste. They do not have the permits required for this purpose. However, this is an item for consideration as the tank storage terminals do not always know the origin and therefore status of the substances.

According to the REACH Regulation, the tank storage terminal comes under the definition of a downstream user. Namely, it is a formulator/mixer of various substances and/or mixtures⁴. The tank storage terminal is neither a producer of new substances nor an importer of substances—any imports from outside the EEA are done by the lessee of the tank—but rather blends the incoming substances or mixtures into a new blend, which involves a physical process without new substances being produced.

The tank storage terminal receives a variety of products referred to above in 1 to 6 inclusive and stores these in its tanks. The new blend that is created when various individual substances (UVCB as well as clearly defined substances) or blends end up in a tank is not subject to a registration obligation (after all, when done properly, all individual substances will have been registered by the producer or importer, and recovered substances are exempt from the registration obligation). There is, however, an obligation to prepare a new safety data sheet (SDS) for the new blend. This SDS cannot be the same as the one belonging to an individual UVCB substance with its corresponding REACH number and data. It will have to be an SDS of a blend, on which the composition is specified under heading 3 and on which the product must be classified under heading 2 on the basis of CLP regulations⁵.

⁴ Art. 3 under 13: any natural or legal person established within the Community, other than the manufacturer or the importer, who uses a substance, either on its own or in a mixture, in the course of his industrial or professional activities.)

⁵ CLP Regulation: Regulation EU/1272/2008 on classification, labelling and packaging of dangerous substances

The definitions in the REACH Regulation are important to ensure proper comprehension of the obligations of the various actors pursuant to that regulation.

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The tank storage terminal provides a production service to the lessee of the tanks. It receives the various substances and mixtures in the storage tank and physically blends these substances and mixtures on the instructions of the lessee and in accordance with a contract for those services. On that basis, the tank storage terminal is a so-called toll manufacturer.

Article 31, paragraph 1 of REACH requires the supplier of a substance or a mixture to provide the recipient with a safety data sheet where a substance or mixture meets the criteria for classification as hazardous in accordance with the CLP Regulation.

In Article 3 (32) of REACH, a supplier is defined as “any manufacturer, importer, downstream user or distributor placing on the market a substance, on its own or in a mixture”.

The REACH definition “placing on the market” means “supplying or making available, whether in return for payment or free of charge, to a third party”.

Pursuant to these definitions, blends that are made available by the tank storage terminal to the recipient (meaning the lessee/customer) must be considered as having been placed on the market. The tank storage terminal is therefore the supplier of the blend and the lessee/customer (often the trader) is the recipient within the meaning of REACH.

As a toll manufacturer, the tank storage terminal is thus officially responsible for providing an SDS of the blend that it is producing for the recipient. However, the SDS can be prepared by the recipient (often the trader) if the parties agree to this.

Traders

The customers in this chain are the traders. These enterprises lease storage space from the tank storage terminals and buy lots of substances and mixtures on the international market. They then have these lots shipped to the tank storage terminals.

Once there, these lots are transferred by pump into tanks on the instructions of the trader. The trader instructs the tank storage terminal to perform activities such as pumping and transshipment into other tanks or ships. The trader verifies and decides on the structure of a tankage of various lots. Once the trader has “built up” fuel oil out of various lots in this manner, it will be sold on the market as fuel oil.

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In doing so, the trader is the one who decides on the composition of the fuel oil and who places the fuel oil on the market. The trader is also the one who possesses the information and origin of the substances and mixtures bought.

The sale of fuel oil by the trader to third parties comes under the definition “placing on the market”. Consequently, the trader can be designated as a “supplier” and is therefore obliged to provide the recipient with an SDS.

Conclusion: The REACH obligation of providing a safety data sheet therefore applies to the tank storage terminal (blender) as well as the trader.

ENVIRONMENTALLY HAZARDOUS SUBSTANCES AND PREPARATIONS (ADMINISTRATION) DECREE

According to Article 36 of the REACH regulation, each manufacturer, importer, downstream user and distributor shall assemble and keep available all the information he requires to carry out his duties under this Regulation for a period of at least 10 years after he last manufactured, imported, supplied or used the substance or mixture.

The Environmentally Hazardous Substances and Preparations (Administration) Decree applies to the production of marine fuels, in addition to the REACH Regulation and the CLP Regulation. This Decree obliges anyone who professionally manufactures or imports substances or preparations (mixtures) in the Netherlands to keep records.

These records pertain to the substances and mixtures that are manufactured, imported, and made available to another party. The chemical names of substances and the most important substances present in mixtures up to a proportion by weight of 95% must be recorded.

The obligation to keep records applies to anyone who professionally manufactures or imports substances or mixtures in the Netherlands. As a toll manufacturer, it is the terminal (blender) that effectively manufactures blends. Consequently, the terminal must be designated as having the obligation to keep records.

The trader does not perform physical acts, but these are performed on his instructions. The trader buys the substances and mixtures, and knows (or should know) the chemical composition. He gives instructions for the blending and, in doing so, determines the composition of the mixture, and can therefore also be considered as someone who manufactures a preparation.

The ensuing conclusion is that the terminal as well as the trader fall within the scope of the Environmentally Hazardous Substances and Preparations (Administration) Decree and must keep records.

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Helsinki, 07-05-2008
JN/je D(2008)/ 719

Alain Heilbrunn
Secretary-General
CONCAWE
Boulevard du Souverain 165
B-1160 Brussels
Belgium

Dear Mr. Heilbrunn,

Pursuant to our letter of 22 February 2008 titled "REACH-Regulation and blending of gasoline" (Our reference: FB/je D(2007)/06) and the subsequent meeting of 2 April 2008 between CONCAWE and ECHA, I am writing to clarify the status of gasoline under the REACH Regulation.

As stated in our earlier letter, gasoline is described in the European Inventory of Existing Commercial chemical Substances (EINECS) under number 289-220-8; CAS number 86290-81-5 as "a complex combination of hydrocarbons consisting primarily of paraffins, cycloparaffins, aromatic and olefinic hydrocarbons having carbon numbers predominantly greater than C3 and boiling in the range of 30°C to 260°C (86°F to 500°F)" and thus may be regarded as a (phase-in) substance under the REACH Regulation under certain circumstances.

It is the responsibility of potential registrants to decide whether their different gasoline qualities are covered by this entry description. However, whether gasoline is a substance or preparation under the REACH regulation will depend on the nature of the manufacturing or processing by which it is produced.

In this respect, gasoline manufactured within an integrated refinery complex through various refinery processes would be viewed as a substance under the REACH Regulation. The manufacturing steps which occur within an integrated refinery complex are a matter for manufacturers who are best placed to understand their processes. Similar principles also apply to the manufacture of other petroleum hydrocarbon substances. However, any further mixing of performance additives or oxygenates would lead to formulation of a preparation.

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Companies that mix gasoline hydrocarbons (and of other petroleum hydrocarbons) that are located outside of the refinery fence-line are formulators of a preparation and under REACH would be viewed as downstream users. It may well be that the gasoline preparation reflects the same hazard profile and exposure scenario as the substance gasoline.

Given this dual nature of gasoline (and other petroleum hydrocarbons) under REACH, it is in the responsibility of the importer to decide whether the import can be treated as a substance or as a preparation.

I trust this clarifies your questions.

Yours sincerely,



Geert Dancet
Executive Director