

FETSA's secretary general Hennie Standaar summarises its latest assessment of REACH and the effect of the regulation

# REACH and independent tank storage

Despite the mounting number of experts in various companies, institutions and associations, the overriding question about what the impact of REACH on tank storage may be remains difficult to answer.

This may be caused by little understanding outside the business sector of what the tank storage industry is actually doing. The Federation of European Tank Storage Associations (FETSA), the voice for tank storage in Europe, has been digging deeper into this issue and assessing it from the specific vantage point of the independent tank storage operator.

For independent tank storage the formal legal roles and obligations under REACH are mainly non-existent. However, all companies are strongly advised to check their individual positions using the navigator of the European Chemicals Agency or by approaching one of the 28 official national websites. Alternatively, some tank storage companies provide services such as fiscal representation for importers established outside the EU /

EEA. This is an area where uncertainty still exists. In all cases the safest approach may be not to accept any product for storage without a proper REACH registration. REACH will change the storage sector's business environment, and it may also change the requirements for handling products. To some however, REACH may provide a business opportunity.

## A quick view

REACH stands for registration, evaluation and authorisation of chemicals. The idea is to control the impacts on human health and the environment that may arise from the production and use of chemicals that are marketed in the EU. In tank storage a distinction is often made between chemicals and minerals – chemicals obtained through chemical processes and minerals obtained through physical separation and recombination. For REACH all these are substances including familiar everyday consumer products like



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household cleaners, and will not be limited to the substances yet to be invented.

A pre-registration period will begin on 1 June 2008 and will end on 1 December. It is not yet clear exactly how this will work but registration is essential. Moreover, it should be noted that this is a Regulation, not a Directive. This means there is no room for national interpretations or adaptations. Also, although this is an EU regulation it will also be applied in full by

the members of the European Economic Area (EEA).

Various studies have indicated that manufacturers of consumer chemicals may see their production drop by 50% and a drop in GDP by 2.9% (Arthur D. Little, report 2003/07/03). Also, this legislation may discourage market entries from outside Europe and make European price levels too high to compete on the world market.

On the other hand the regulation will eventually replace a myriad of existing legislation relating to dangerous substances. In this way six regulatory volumes will be repealed and one will be simplified. Other arguments in favour include improved public health and even death statistics in Europe. Moreover, the Commission claims that REACH will add to European competitiveness – a view that is practically unsupported in the business community.

## The set up

REACH has been set up along the product

## Timetable

18 December 2006: Adoption in Council and Parliament

1 June 2007: Effective

1 June 2008: European Chemicals Agency becomes operational, start of the pre-registration phase (for existing substances)

30 November 2008: End of the pre-registration phase

1 January 2009: European Chemicals Agency to publish pre-registered list

30 November 2010: Deadline for registration for substances >1000 tonnes per year produced or imported and certain hazardous substances irrespective of production volume. Substances from producers and importers which failed to register these before this date are expelled from the market

31 May 2013: Deadline for registration for substances >100 tonnes per year produced or imported

31 May 2018: Deadline for registration for substances >1 tonne per year produced or imported

\*The proper timetable runs until 2022, showing detailed repeals and amendments of existing legislation

manufacturing and trade chain. It requires defined market participants to perform certain formal roles and obligations. For example, manufacturers and importers will be required to register substances and to develop exposure scenarios down the supply chain, maintain a technical dossier, inform the downstream players and carry out testing upon request.

After the relative simple, yet compulsory, procedure to ease in existing phase-in substances, the pre registration phase (Title III, Ch 3), will be done this year. New entries need to undergo a thorough testing and risk assessment programme, for which the manufacturer or importer will be held responsible. The outcome may influence handling procedures, occupational exposures and manufacturing restrictions. To prevent double work and unnecessary testing REACH has made provisions for data sharing in the Substance Information Exchange Fora (SIEF). In contrast with the usual EU approach, this will mean that competitors need to work together. This is described in Title III article 25 till 30. The European Chemicals Agency in Helsinki will publish a list of

substances including their EINECS and CAS numbers on their website by 1 January 2009 (Title III, Ch3, Art 28.4).

### The tank storage perspective

REACH will affect both the petroleum and the chemical industry as well as the downstream manufacturing and trading chain. These are all important customer groups. Product flows are likely to change or even reverse or even disappear and some products may be replaced by others. For the tank storage industry REACH will change the business environment, but now it is impossible to say how.

The crucial element is that an independent tank storage operator is not the owner of the product and never will be. Consequently, terminals do not and cannot buy or sell or place products (substances) on the market. A tank storage company is a provider of logistic services. Therefore it will never be able to predict which products will be stored or handled later this or next year or beyond, which makes registration impossible. Since the pre-registration phase is imminent, the question now is, can the tank storage

## Role definitions

**Manufacturer:** A company which manufactures a substance within the European Community. Obligation to register said substance at the European Chemical Agency

**Importer:** Responsible for import. Obligation to register said substance at the European Chemical Agency

**Downstream user:** Not a manufacturer or importer, which uses a substance in the course of its activities. Obligation to comply to the safety data sheet provided with the substance. Supplies supply data and safety data to buyers

**Distributor:** A retailer which stores and places products on the market for third parties. Obligation to pass the relevant information on both upstream and downstream

All these definitions are established within the community

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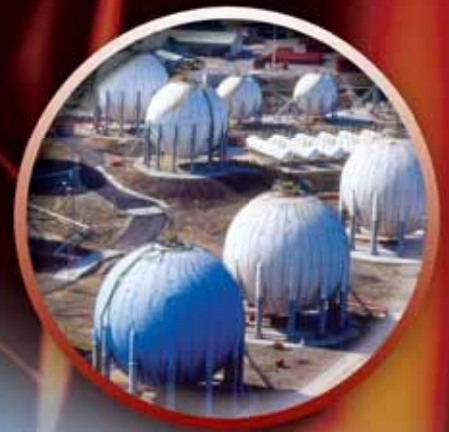
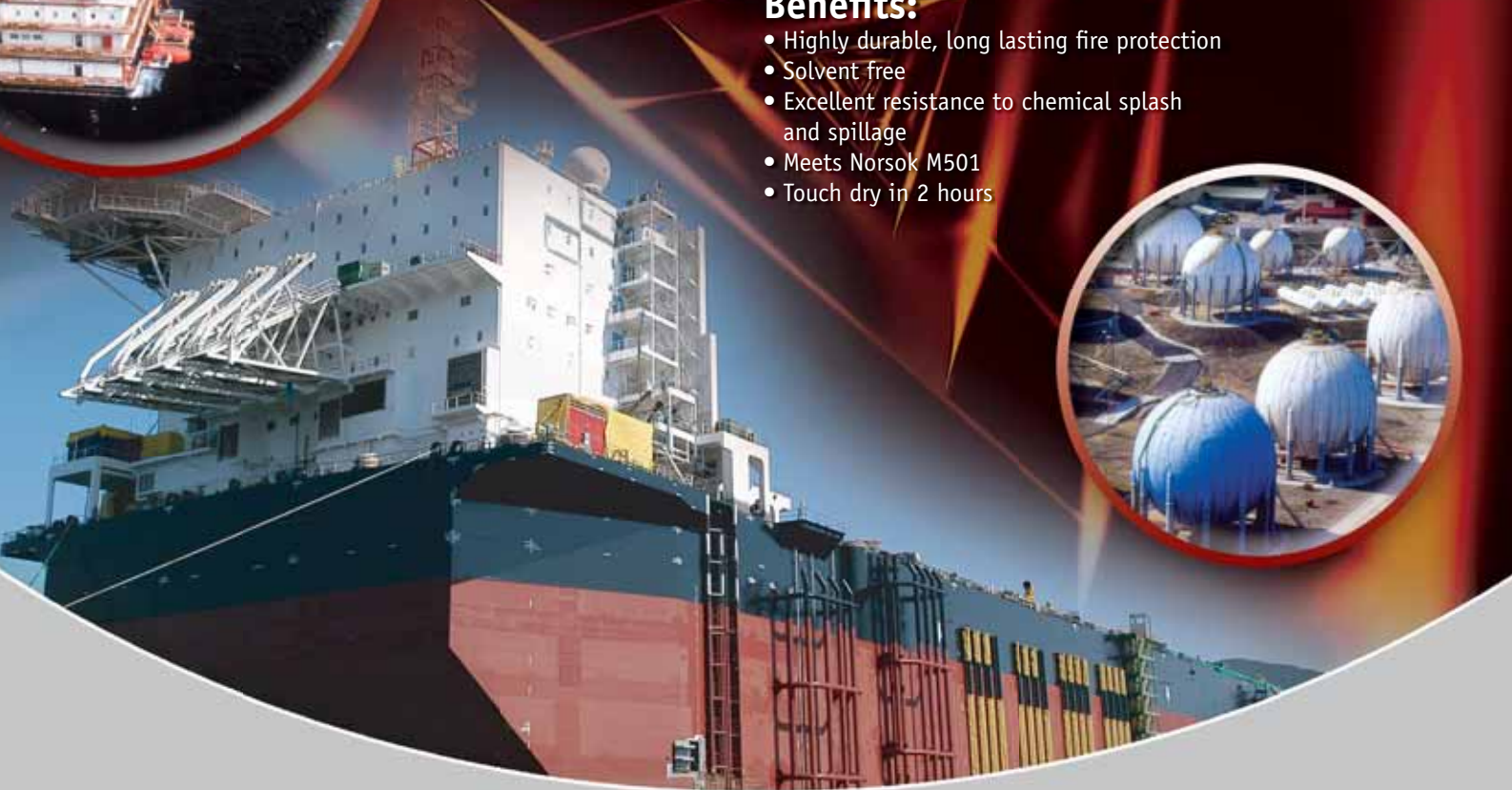
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## Definitions

**Substances:** These are either a chemical element or a compound, including additives for stability and impurities derived from the production process. A solvent that can be separated out by a physical process (free interpretation of the text) is excluded, but may be a substance in its own right. These substances need be registered. (Title II articles 5,m 6,7)

**Preparations:** A mixture or solution of two or more substances. These need not be registered as such, since its constituting components already are

**Articles:** An object that derives its functioning rather from its design than from its chemical composition. An article may contain a substance that need be registered.

**Phase-in substances:** Substances that already are on the market and are either listed in EINECS (European Inventory of Existing Commercial Chemical Substances), CAS or compliant to other earlier legal identity codes.

sector be identified as a registrant under REACH and would it therefore have to meet requirements?

**Case one:** The producer or importer is inside the EEA. After intermediate storage the next owner of the product is inside or outside (export) the EEA. The registrant is the producer or importer so the terminal operator should only accept registered and authorised products.

**Case two:** The producer or importer is inside the EEA. Several different products must be stored and blended (mixed) and the next owner of the blended product is either in or outside the EEA. The registrant of each component is the producer or importer. These can only be accepted in a tank storage facility provided with proper proof of registration and authorisation. During blending no chemical reactions occur, implying that no new substance has been created – the blend is called a preparation. If incidentally a chemical reaction does occur, the resulting product will be exempt on the basis of Annex V of the regulation. The same applies for wastes (Annex V and Article 2.d).

**Case three:** Fiscal representation on behalf of principal outside the community. Article 3.11, Title 1 defines an importer as a natural or legal person

established within the community who is responsible for import. In the tank storage sector, but also in other logistic concepts (customs agents and freight forwarders) there are also importers that are not established and have no representation in the community. These may need a temporary fiscal representative on behalf of and authorised by the foreign importer of VAT declarations and dues. Import and Excise duties may also be a part of the deal.

The name of the representative appears on the declarations and indeed some tank storage companies provide this service. Does this make an importer? Probably not, but some legal interpretations are different and point at Article 3.10, which defines import as the physical introduction into the customs territory of the community. This goes against the REACH principle to stay close to the source of knowledge about the product, which is the producer or the importer, often the same entity. The point however is and remains, that independent tank storage companies have no title and therefore no control over the product and cannot bring the product on the market, since this cannot be done without a change of ownership. The one who actually and physically brings the product within the

community market is the first owner of the substance who is established within the community.

**Case four:** The only representative, however, is a provision in REACH that seems to go beyond the fiscal and customs aspects. With reference to Title II Article 8, 1,2,3 a natural or legal person outside the community who desires to import a substance, a preparation or an article into the community may be represented by a natural or legal person inside the community. This only representative bears the full responsibility of a producer or importer under the REACH regulation, registration included. For this he must have sufficient knowledge and adhere to various requirements regarding safety data sheets (Title IV, articles 31 and 36). The true importer must advise the whole downstream chain about this appointment, which requires mutual agreement.

**Case five:** From the text (Title I article 3.24) storage is mentioned as being a use. Does this imply that tank storage is a downstream user, with a specific obligation? The answer to that is no for the simple reason that a substance for a downstream user is a means of achieving an economic result. For tank storage the means of production are tanks, jetties, loading bays and the piping infrastructure, not the product. The European Commission laid

out several technical guidance documents under the heading of the REACH Implementation Project (RIP). In RIP report 3-5-1, which deals with downstream users, it is clearly stated that under REACH a storage provider is not regarded a downstream user, and transport is not regarded as a use. This clearly states that tank storage also has no formal legal obligation as a downstream user under REACH.

The customs status of products in storage also needs to be accounted for. The REACH regulation does not apply to substances under customs supervision (Title I Article 2-b). If the origin (production) of the substance and its destination are outside the community, REACH obviously does not apply. However, if either destination or origin of the substance is within the community, clearing of the products immediately makes REACH applicable.

Tank storage companies will not be able to accept any product without the appropriate authorisation and pertaining documentation after the registration and notification of substances in future for which the time table and procedures are laid out in Title VII. This holds for products manufactured in Europe and imported from outside. The registration will be made known to the registrant (producer and / or importer) and the member state where the registrant is registered. ●

## FETSA's advice:

- Approach principals as soon as possible
- Check individual specifics via the ECHA or national websites
- Check (future and long term) storage requests against the substances lists published by ECHA and national authorities
- Avoid liability risks – do not accept unregistered or unauthorised products for storage

### USEFUL LINKS:

**ECHA website:** [http://echa.europa.eu/home\\_en.html](http://echa.europa.eu/home_en.html)

**Commission's website:** [http://ec.europa.eu/enterprise/reach/helpdesks\\_en.htm](http://ec.europa.eu/enterprise/reach/helpdesks_en.htm)

**The full regulation text:** (EC) 1907 / 2006: [www.fetsa.org](http://www.fetsa.org)