



Memorandum of Understanding

between the

Health and Safety Authority and the Environmental Protection Agency

This memorandum of understanding sets out areas of shared responsibility in relation to the operation and enforcement of the REACH Regulation, the Detergents Regulation, the Chemicals Act 2008 and the SEVESO II Regulation.

Signed:

Laura Burke

On behalf of

Environment Protection Agency

Date: 21/2/2013.

Signed:

Martin O'Halloran

On behalf of

The Health & Safety Authority

Date: 27th Feb 2013

OBJECTIVE OF THE MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MoU) establishes a co-operative framework for the implementation and enforcement of the REACH and Detergent Regulations as outlined in the Chemicals Act 2008 between the Health and Safety Authority (the Authority) and the Environmental Protection Agency (EPA).

It also outlines the co-operative and consultative framework for the efficient implementation of

- Council Directive 96/82/EC as amended by Council Directive 2003/105/EC here after referred to as the SEVESO II Directive¹.
- Regulation (EC) No. 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants, here after referred to as the EU POPs Regulation.

LEGISLATIVE BASIS

THE REACH REGULATION (EC 1907/2006)

REACH is a European Community Regulation EC 1907/2006 on chemicals and their safe use. It deals with the Registration, Evaluation, Authorisation and Restriction of Chemical substances. The aim of REACH is to improve the protection of human health and the environment through the better and earlier identification of the intrinsic properties of chemical substances. The REACH Regulation imposes obligations on those who manufacture, import, supply or use substances, on their own, in preparations or in articles, to identify and manage the risks arising from their manufacture or use.

THE DETERGENTS REGULATION (EC 648/2004)

The aim of the Detergent Regulations (EC) No. 648/2004 and subsequent amendments is to allow for the free movement of detergents and surfactants for detergents within the EU whilst at the same time ensuring a high degree of protection of the environment and human health.

THE SEVESO II DIRECTIVE (COUNCIL DIRECTIVE 96/82/EC)

Council Directive 96/82/EC as amended by Council Directive 2003/105/EC (Seveso II) requires Member States to ensure a high level of protection for people and the environment in the context of major hazards involving dangerous substances. The Directive imposes obligations in respect of occupational safety, public safety and environmental protection. Under European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2006 (SI 74 of 2006) transposing Council Directive 96/82/EC as amended by Council Directive 2003/105/EC, the Authority is listed as the Central Competent Authority (CCA) while the EPA is specifically cited as having a consultative role in a number of specific areas.

¹ To be replaced by the SEVESO III Directive (2012/18/EU) by June 2015.

Further adaptation of the provisions on major accidents occurred on 4 July 2012, with publication of a replacement Directive – 2012/18/EU – the SEVESO III Directive Member States have to transpose and implement this new Directive by 1st June 2015, which is also the date when the new chemicals classification legislation becomes fully applicable in Europe. This Memorandum of Understanding will be reviewed as appropriate in light of any transposing obligations that impact on its operation.

EU POPs REGULATION

Regulation (EC) No. 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants (as amended) aims to protect human health and the environment from persistent organic pollutants by a number of measures. These include prohibiting phasing out as soon as possible, and/or restricting the production, placing on the market, and use of substances subject to the Stockholm Convention on Persistent Organic Pollutants, and the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants. The Regulation also includes obligation to minimise with a view to eliminating where feasible, as soon as possible, release of such substances, and establishes provisions regarding management of waste consisting of, containing, or contaminated by any of these substances.

Under the national Persistent Organic Pollutants Regulations, 2010 (SI No. 235 of 2010) the Authority is listed as a Public Authority Concerned for national POPs Regulations and the EU POPs Regulation while the EPA is designated as the Competent Authority for the purposes of the EU POPs Regulation.

THE CHEMICALS ACT 2008 (NO. 13 OF 2008)

The main purpose of the Chemicals Act 2008 is to facilitate the enforcement of certain EU Regulations concerning chemicals, including *inter alia*, the REACH and Detergent Regulations. The Act sets out the national authorities that will enforce these two Regulations and under Section 9 requires national authorities to ‘*cooperate with each other in the performance of their functions*’.

The Chemicals Act 2008 lists three competent authorities (CAs) for the purposes of the REACH Regulation in Ireland.

- The Health and Safety Authority (the Authority)
- The Department of Agriculture, Fisheries and Food (DAFF)
- The Environmental Protection Agency (EPA)

The Act also lists four Competent Authorities (CAs) for the purposes of the Detergent Regulations in Ireland.

- Health and Safety Authority (the Authority)
- Environmental Protection Agency (EPA)
- Department of Health and Children

- Irish National Accreditation Board (INAB)

ENVIRONMENTAL PROTECTION AGENCY ACTS (1992-2012) & WASTE MANAGEMENT ACTS (1006-2012)

Both of these legislative acts have wide scope and purpose; however for the purpose of this Memorandum of Understanding the area of mutual interest is in relation to statutory obligations in respect of accident and emergency preparedness and response, as well as operation of best available techniques for process and materials management at regulated installations (IPPC & Waste). Many of the EPA regulated sites under the Environmental Protection Agency Acts and the Waste Management Acts are also subject to Authority SEVESO II control.

ROLES AND RESPONSIBILITIES OF THE PARTIES TO THIS MOU

HEALTH AND SAFETY AUTHORITY (AUTHORITY)

The Authority is the national body in Ireland with responsibility for securing health and safety at work. It is a state-sponsored body, established under the Safety, Health and Welfare at Work Act 2005 reporting to the Minister for Jobs, Enterprise and Innovation.

Under the Chemicals Act 2008 and 2010, the Authority is the Competent Authority for the application of the REACH Regulation relating to all chemicals except pesticides and biocides and Detergent Regulations relating to all aspects except biodegradability and biocidal properties. The Chemicals Act 2008 also gives the Authority a lead role in relation to national administrative and operational requirements. Under the Seveso II Regulation, the Authority is listed as the Central Competent Authority (CCA).

ENVIRONMENTAL PROTECTION AGENCY (EPA)

The EPA is an independent public body established under the Environmental Protection Agency Act, 1992. The Environmental Protection Agency (EPA) has responsibilities for a wide range of licensing, enforcement, monitoring and assessment activities associated with environmental protection. Primary responsibilities of the EPA include:

- Environmental licensing
- Enforcement of environmental regulations
- Coordination and supervision of enforcement by local authorities
- Environmental education and guidance
- Monitoring, analysing and reporting on the environment under the Water Framework Directive and the Clean Air for Europe (CAFE) Directive
- Supervision of public body activities relating to provision of Drinking Water and Wastewater Treatment
- Regulating Ireland's greenhouse gas emissions (emissions trading)

- Coordinating and funding environmental research
- Statutory consultee on Strategic environmental assessment plans
- Waste Reporting and National Waste Prevention Programme
- Implementation of certain provisions of the EU POPs Regulation

AREAS OF SHARED RESPONSIBILITY AND CO-OPERATION

In recognising each Competent Authority's respective statutory responsibilities and obligations, the Authority and the EPA shall endeavour to co-operate closely particularly in relation to the following:

- Operation and implementation of the different legislative areas identified in this MoU.
- Co-ordination and consultation on national and EU technical positions, working groups and meetings
- Enforcement
- Accident and Emergency preparedness and response at regulated installations

More specific details for each of the legislative areas covered by this MoU can be found in the appendices.

OTHER AREAS OF CO-OPERATION

STAKEHOLDER AWARENESS AND ENGAGEMENT

In order to maximise resources in the raising of Irish stakeholder awareness on the requirements of the REACH legislation, Detergent Regulations, the Seveso II Directive and the EU POPs Regulation, both organisations shall, where possible, consult and co-ordinate prior to the undertaking of national awareness efforts.

INFORMAL COMMUNICATION

In the interest of achieving clarity of roles, staff from the Authority and EPA may consult on issues of mutual interest, as the need arises. Correspondence from the EPA to the Authority on any matters covered by this MoU may be sent to chemicals@hsa.ie and correspondence from the Authority to EPA on matters covered by this MoU may be sent to chemicals@epa.ie.

EMERGENCY PLANNING

The Authority and the EPA will collaborate, share knowledge and experiences in relation to their respective responsibilities/involvement in national emergency preparedness and responses.

LICENSING

The Authority and EPA will collaborate, share knowledge and experiences in relation to their respective responsibilities/involvement in the licensing of various activities, including but not limited to industrial activities and extractive industries involving hydraulic fracturing.

ADVICE AND GUIDANCE

It is recognised that the Authority is a nominating body for the purpose of the EPA Advisory Committee, and is a member of the EPA Genetically Modified Organisms Advisory Committee as well as the EPA Health Advisory Committee. The EPA is also a member of the Authority's Technical and Scientific Advisory Committee (TSAC).

FORUM FOR CO-OPERATION AND REVIEW

The Authority and EPA shall meet jointly on a biannual basis (minimum) to monitor and review the implementation and effectiveness of this MoU. This forum shall be known as the ***Joint Review Group (JRG)*** and it shall be held in either the Authority or EPA offices or teleconference, as appropriate.

The ***JRG*** may also consider co-operation on operational and enforcement matters which are not otherwise covered by this MoU. Where appropriate, representatives from each organisation will refer such matters to higher management within each organisation, for consultation and direction in line with the respective organisational policy for each body.

DATA SHARING

Both organisations shall be bound by Data Protection and confidentiality requirements of their relevant legislation.

In certain areas of common interest the Authority and EPA possesses valuable information, technical knowledge, experience and data of a confidential nature that each regard as assets of considerable value. A separate data sharing agreement, outside of this MoU, shall be entered into to cover requirements to share data shared between the two Parties.

REVIEW PERIOD

The terms and operation of this memorandum of understanding shall be reviewed at 3-yearly intervals by the Authority and the EPA or when necessary.

This MoU does not override the statutory duties or powers of the individual CAs and is an indication of agreement rather than a legal commitment.

APPENDIX I - REACH REGULATION

CO-ORDINATION FOR EU CARACAL MEETINGS

Meetings of the Member State (MS) Competent Authorities for the REACH and CLP Regulation, known as the CARACAL, are organised by the EU Commission. As the lead CA, the Authority normally attends these meetings and represents all Irish CAs.

The meeting attendee(s) shall represent Ireland and shall be responsible for raising items and positions of the other organisation at the meeting. In the event that the non-attending organisation wishes to raise an item, it shall alert the attending CA and provide details, where possible, in writing in advance.

The Authority and EPA shall have responsibility for drafting position papers concerning their respective areas and will circulate these to each other and other Member State CAs for information and/or comment, as deemed appropriate.

The Authority and EPA shall both ensure that contact details for their respective CA have been provided to the Commission and the European Chemicals Agency (ECHA) to allow for access to CIRCA and other circulation lists. Each organisation shall also ensure their respective parent departments are briefed as deemed appropriate.

MEMBER STATE TASKS UNDER REACH

REACH specifies a number of member state competent authority tasks, including substance evaluation, the preparation of Annex XV dossiers to identify a Substance of Very High Concern (SVHC) and the preparation of Annex XV dossiers for a restriction proposal. The Authority, as lead CA, will take a lead role in completion of these tasks. The Authority will provide regular updates and briefings on this work through the Interdepartmental meeting on chemicals organised by the Department of Jobs, Enterprise and Innovation. The Authority may from time to time seek input and advice from the EPA on such matters as they arise.

EUROPEAN CHEMICALS AGENCY (ECHA) COMMITTEES

The Authority shall be responsible for providing the nomination for the national representative to the Member State Committee (MSC) and the Forum on Enforcement. The Authority shall also be responsible for nominating at least one expert to the Risk Assessment (RAC) and Socio-Economic Analysis (SEAC) Committees.

In line with Article 85(6) of the REACH regulation, each competent authority shall on request facilitate and provide scientific and technical resources and support, where possible, to the IE

participants on these committees. The Authority may therefore seek input and support from the EPA in relation to work within these various committees.

EU MEMBER STATE REPORTING

In accordance with Article 117 of REACH, every 5 years, Member States shall submit to the Commission a report on the operation of the respective Regulation in their territories including sections on evaluation and enforcement. The section on enforcement shall include results of the official inspections, the monitoring carried out, the penalties provided for and the other measures taken pursuant to Articles 125 and 126 of REACH during the previous reporting period.

The Authority and the EPA shall prepare their respective sections of each of the reports and shall submit it to the Department of Jobs, Enterprise and Innovation (DJEI).

APPENDIX II – DETERGENTS REGULATION

OPERATIONAL COOPERATION

It is the responsibility of the Authority and the EPA as CAs, to communicate and exchange information relating to the management of this Regulation. There is also a need for coordination between the CA's to ensure a harmonised approach in the development of joint Irish CA policy positions, as deemed appropriate.

CO-ORDINATION FOR DETERGENT WG MEETINGS

Detergent WG meetings are organised by the EU Commission. The Detergent WG is an expert group which advises the European Commission on policy matters related to detergent products. The Authority normally attends these meetings and represents all IE CAs. The meeting attendee shall represent Ireland and shall be responsible for raising items and positions of the other organisation at the meeting. In the event that the non-attending organisation wishes to raise an item, it shall alert the attending CA and provide details, where possible, in writing in advance.

The Authority and EPA shall have responsibility for drafting position papers concerning their respective areas and will provide these to each other and to DJEI for circulation to the other Member State CAs for information and/or comment, as deemed appropriate.

The Authority and EPA shall both ensure that contact details for their respective CA have been provided to the Commission to allow for access to CIRCA and other circulation lists and that parent departments are briefed as deemed appropriate.

APPENDIX III –CHEMICALS ACT 2008

NATIONAL ANNUAL REPORT

Under Section 8 of the Chemicals Act 2008, the Authority is required to compile an annual report with respect to operation of the Chemicals Act in Ireland. Within two months after the end of each year, the EPA shall submit a report to the Authority in the agreed format on its activities relating to REACH and Detergents. .

Under Section 8(4) of the Chemicals Act, the Authority may from time to time require the EPA to furnish other reports and information related to the performance of EPA's function. In so doing, the Authority shall provide EPA with the necessary request and templates in sufficient time.

ENFORCEMENT-

A. REACH REGULATION

The EPA is responsible for the enforcement under the Chemicals Act of the REACH (Titles II, IV, V, VII and VIII) with respect to environmental protection. The Authority is responsible for enforcement under the Chemicals Act of the REACH (Titles II, IV, V, VII and VIII) with respect to substances other than those within the remit of Department of Agriculture, Fisheries and Food (DAFF) and the EPA. The specific requirements on enforcement can be found in Part 4 of the Chemical Act 2008.

The Authority shall provide updates and outcomes from the Forum on Enforcement to the EPA. The Authority and EPA may choose to be involved in specific Forum led enforcement initiatives either separately or jointly. For joint initiatives, the respective organisations shall co-ordinate their activities in advance to arrive at an agreed national involvement.

The Authority is also the national co-ordinator of the Reach Information Portal for Enforcement (RIPE) tool provided by ECHA to assist enforcement authorities. A separate agreement on access and support for RIPE will be put in place if and when a need for access to RIPE is determined by the EPA.

B. DETERGENTS REGULATION

The EPA is responsible for the enforcement under the Chemicals Act of the Detergent Regulation with respect to the biodegradability of detergents. The Authority is responsible for enforcement under the Chemicals Act of the Detergents Regulations with respect to detergent products other than those within the remit of Department of Agriculture, Fisheries and Food (DAFF).The specific requirements on enforcement can be found in Part 4 of the Chemical Act 2008.

As lead Competent Authority under the Chemicals Act 2008, the Authority may from time to time request EPA advice and input to enforcement activity not specifically outlined above.

APPENDIX IV – SEVESO II DIRECTIVE

OPERATIONAL LIAISON

Individual Inspectors from each organisation shall, through their representatives on the **JRG**, make arrangements for maintaining effective liaison in their geographical areas, including periodic meetings/contacts for effective information exchange.

SAFETY REPORT EVALUATION

The Authority may consult with the EPA on the information contained within a Safety Report relevant to the possible risks of environmental pollution from a major accident. In such cases, the lead Inspector from the Authority will forward a copy of the Safety Report to the EPA at info@epa.ie following the Authority's initial examination of the report, and accompany it with the Authority's draft assessment document and a covering letter highlighting the following –

- a) Name of the Establishment
- b) Location of the Establishment
- c) Nature of the activity(s) of the Establishment
- d) A request to the EPA seeking their views on the Safety Report within 8 weeks of receipt of the safety report and accompanying documentation – focussing principally on the identification of credible worst case major accidents to the environment as presented in the safety report, the adequacy of the presented control/mitigation measures associated with these scenarios, and the adequacy of the associated emergency response.

EVALUATION AND INSPECTION OF SEVESO II ESTABLISHMENTS (UPPER AND LOWER TIER)

The Authority will take into account any requirements set under EPA licensing arrangements (Best Available Techniques, BREF Notes etc.) as illustrating the required standard to satisfy the “best practicable means” criteria concerning the prevention and mitigation of major accidents to the environment, and will seek advice on such guidance from the EPA as appropriate.

Both organisations, through the **JRG** framework, will exchange details on specific issues as they relate to major accident risk, consequence, control and mitigation. The rights of the two organisations to restrict information regarded as confidential under each organisation's relevant legislation will be respected at all times.

ACCIDENT INVESTIGATION

If either organisation becomes involved in the investigation of a serious accident/incident at a Seveso II establishment involving the release of dangerous substances, it shall inform the other, through the **JRG** contacts as soon as is practicable. The **JRG** will in turn establish communication between the lead investigators from both organisations dealing with the accident/incident.

Upon either organisation being notified of a “major accident” they will inform the other. The Authority may seek the technical expertise and advice of the EPA in the immediate event of a major accident or its aftermath.

Following a major accident the Authority may prepare a special report on the accident. The Authority may consult with the EPA regarding the contents of this special report or any aspect of it. In addition, the Authority may appoint any of its advisors or other persons it deems appropriate to be Inspectors of the Authority for the purposes of the Seveso II transposing Regulations. Subject to the agreement of the EPA, the Authority may appoint an Inspector of the EPA to be an Inspector of the Authority for the purposes of providing technical assistance in undertaking major accident investigation and report preparation. This may be of relevance where Inspectors of the EPA may not have specific powers of entry to non-EPA licensed sites.

EUROPEAN COORDINATION

The Authority as Central Competent Authority participates in the CCA meetings. Meeting reports of the Committee of Competent Authorities (CCA) for the Seveso II Directive shall be forwarded by the Authority to the Agency.

Reports from meetings on environmental issues related to Seveso II that are attended by the Agency will be forwarded to the Authority.

