



INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION

July 10, 2003

President

Gregory J. Foltz
Milacron Marketing
Company

Subject: European Chemicals Policy—REACH

Dear Directorate General:

First Vice President

Paul P. Converso
Battenfeld Grease & Oil
Corporation of N.Y.

Second Vice President

James A. Taglia
Nor-Lakes Services
Midwest, Inc.

Treasurer

James L. Kudis
Allegheny Petroleum
Products Company

Executive Director

Celeste M. Powers, CAE

General Counsel

Jeffrey L. Leiter

On 7 May, 2003, the European Commission (“Commission”) held a discussion on its future strategy for chemicals. At that time, the Commission published on the Internet for comment its new chemicals policy, known as “REACH,” to replace existing legislation. Within the new proposal, industry (including independent lubricant manufacturers) will be responsible for demonstrating the safety of its chemicals and for disclosing required information to the public to enable informed choices about the use of chemicals. The Independent Lubricant Manufacturers Association (“ILMA”) always has supported the public’s right-to-know about any hazards associated with chemicals; however, the Association believes that any regulation in this area should provide users with practical, necessary information in the least burdensome way as possible. Accordingly, ILMA would like to participate in a constructive dialogue with the Commission and others to revise and develop the REACH proposal to better achieve the Commission’s stated health, safety and environmental objectives for the new system. It is in this light that ILMA submits the following comments.

Introduction

ILMA is a United States-based trade association with over 250 members who compound, blend, manufacture, and/or supply lubricants and greases. These lubricant and greases are used to lubricate industrial machinery, assist in cutting and shaping of metal components (e.g., automotive engines or transmissions), or as the actual lubricants and greases in gasoline and diesel-powered vehicles. ILMA’s 137 Manufacturing Members—that is, independent lubricant manufacturers—are primarily small businesses—who by definition are neither owned nor controlled by refiners or re-refiners of base oils (used as a principle component of many lubricant formulations) or by manufacturers of chemical additives. ILMA’s Manufacturing Members manufacture and sell more than 75 percent of the metal working fluids (those products used to assist in cutting and shaping of metal) and approximately 25 percent of the engine and transmission oils used annually in the United States. A majority of the ILMA membership both export finished lubricants and greases to Europe and import and use chemicals supplied by European manufacturers as raw materials. In addition, ILMA members have operations in Europe or have entered into joint ventures with European lubricant companies. Thus, ILMA members are directly affected by and have an interest in the Commission’s REACH proposal.

651 S. Washington Street
Alexandria, VA 22314
phone: 703/684-5574
fax: 703/836-8503
email: ilma@ilma.org
web: www.ilma.org

Thus, ILMA members are directly affected by and have an interest in the Commission's REACH proposal.

ILMA members in general have the following concerns with the Commission's proposed chemicals policy:

- The financial burdens imposed and the resulting, potential impacts upon small-to-medium sized enterprises ("SMEs"), including most ILMA members;
- The potential competitive effects generally on the European chemical industry and specifically on ILMA members who supply lubricants and greases to European customers, or who purchase and utilize European-manufactured chemicals in their formulations;
- Potential required disclosure of trade-secret information; and,
- The appropriateness of the Chemical Safety Report.

Financial Burdens and Competitiveness Concerns

ILMA supports a simple, coherent and workable system to develop and communicate needed information concerning the safety of chemicals already in use within the European Union ("EU"). However, the Commission must take socio-economic costs and competitiveness consequences of any new system into account. The direct costs of developing the required information and creating documents to communicate this information will be borne by industry, including SMEs, as well as by those ILMA members who supply lubricant and greases to customers within the EU. Such costs are estimated to be € 2.1 billion for 30,000 existing substances, imposing a significant financial burden upon European chemical manufacturers and importers, including a majority of ILMA members. Moreover, such costs will inherently have a major effect on business operations and are likely to reduce employment both within the European chemical industry and the European manufacturing community.

Further, there are unintended competitive effects from the Commission's proposal. The selling prices of European-manufactured or imported chemicals will increase due to the implementation of the REACH legislation with the unfortunate consequence of European manufacturing being moved outside of the EU in order to remain competitive in the global economy. For example, those ILMA members who now purchase chemicals from European producers, in face of higher costs for purchasing those chemicals, are likely to switch to non-European sources for these chemicals. It is ILMA's opinion that high re-registration costs under the REACH legislation will negatively affect innovation, especially for SMEs, who are strong in proposing innovative uses of substances in new applications that may not have been anticipated by major chemical producers.

Testing Costs for the Re-registration of Chemicals

Because of additional costs that will be associated with the re-registration of chemicals, and the inefficiency to test every chemical, as well as the demanding time it would take for additional

testing, ILMA feels that the successful and on-going High Production Volume (“HPV”) program is an excellent learning tool for the Commission’s proposed chemicals policy.

The HPV chemical program is an example of a successful international chemical program in progress. The HPV program is a collaborative program being conducted globally and jointly by several governmental organizations and trade associations, designed to ensure that the public has access to basic health and environmental effects data for those chemicals which are produced in the highest volumes. HPV chemicals are those non-polymeric organic chemicals that are produced in quantities exceeding one million pounds per year, and are used primarily in industrial settings, such as manufacturing and processing.

The HPV program encourages chemical manufacturers to test voluntarily those chemicals for which little or no health or environmental effects data are publicly available. Currently, chemicals are being tested in a step-wise fashion that limits repetitive testing, that in turn, helps reduce the costs for unnecessary testing as well as inhibits unwanted data that could be cause for confusion. In the HPV program, it has been found that not every chemical needs to be tested, but that data on some chemicals can suffice to evaluate a family of chemicals.

ILMA is in agreement with the European Chemical Industry Council’s views that the Commission’s new chemicals policy should incorporate the principle of risk assessment, based on sound science, and that the safety of any given chemical should be judged on how and where it is used, not just on its intrinsic properties.

Appropriateness of the Chemical Safety Report

ILMA understands the Commission’s proposal to require that Chemical Safety Reports, be prepared for each component in a formulation, and then distributed to the users of the formulations. While of good intent, such a requirement is unworkable. Not only would manufacturers’ ability to protect confidential information be compromised, but the end-user would be unable to cope with the vast amount of information provided. Moreover, the end-user unlikely has the resources available to interpret the information provided. Accordingly, ILMA believes that a properly drafted SDS, for which the enabling legislation is already agreed and implemented within the EU, is the better approach for communicating chemical hazard information.

Potential Disclosure of Confidential Trade-Secret Information

ILMA Manufacturing Members produce many lubricant and grease formulations for their customers. Because of the performance provided by these lubricants and greases, combined with the excellent technical service given by the ILMA Manufacturing Members themselves, European manufacturers, as they do in the United States, preferentially select these formulations for use in their production facilities and equipment. The formulations—that is the specific “recipes” for manufacturing each of these lubricants and greases—are considered “trade secrets” by the independent lubricant manufacturer and are not disclosed to others, even within their own organization, unless they have a “need to know.” Further, the formulations are not disclosed to

users, unless and until a confidentiality or similar non-disclosure agreement is in place which expressly prohibits disclosure of the confidential information to third-parties.

As stated above, the EU should continue to use the SDS Directive as the vehicle for communicating health and safety information to downstream users. Efforts to make the safety data sheet a more useful document with more complete measures for worker protection and directions for disposal as intended by the last amendment to the Directive would be more fruitful than requiring a new and burdensome communication vehicle. It is important that the confidentiality protections under the Directive remain intact or even made stronger so that the exact chemical name need only be revealed for the most serious hazards. Some of our members have had difficulty with an anomaly created in the last amendment of the SDS Directive and the Dangerous Preparations Directive (*Second Amendment (2001/58/EC) to the Safety Data Sheet Directive (91/155/EEC)*) and latest revision (*1999/45/EC) to the Dangerous Preparations Directive (88/379/EEC)*), whereby confidentiality protections were not afforded to chemicals which have environmental hazards but no health hazards.

ILMA is very concerned that the structure of the REACH program, particularly the contents and distribution of Chemical Safety Reports will significantly impact ILMA members' ability to protect their confidential and trade-secret information. Ultimately, if unresolved, ILMA members may choose to reduce their participation in the EU marketplace in order to not compromise their intellectual property.

Conclusion

While ILMA encourages the concept of meeting the economic, ecological and social needs of today's society without impairing the development opportunities of future generations, ILMA believes that the above noted issues, and the unsuitability of the Chemical Safety Report, will impede the accomplishment of the Commission's environmental and health goals and will produce significant, adverse effects including:

- Financial burdens;
- The resulting potential impact upon SMEs;
- The potential impact on the competitiveness of the European chemical industry (specifically upon those ILMA members who supply lubricants and greases to European customers; and,
- The potential required disclosure of sensitive trade-secret information.

ILMA believes that fundamental changes must be made to the REACH program so as to allow it to attain the Commission's environmental and health protection goals without adversely affecting stakeholders, including ILMA members. The international HPV program is an excellent example of a successful chemical information development program. Lastly, ILMA suggests that the already-available SDS could convey more in-depth and more appropriate information for downstream users without the added burden of creating a separate document for each chemical contained in a formulation.

ILMA is in agreement with and associates itself with separate comments made to the Commission by our European counterparts—that is, the British Lubricant Federation (“BLF”)

and the Union of European Independent Lubricant Companies (“UEIL”); however, the above concerns express the views of ILMA members regarding the proposed REACH chemicals policy. ILMA encourages the Commission to bear in mind industry recommendations and proposals, as well as consider the impacts that the future chemicals policy will have on SMEs.

Thank you for the opportunity to present ILMA’s comments during this review process.

Sincerely,



Celeste M. Powers, CAE
Executive Director
Independent Lubricant Manufacturers Association (ILMA)

cc: Board of Directors
SHERA Committee
Jeffrey L. Leiter, ILMA Counsel