

**Consequences of REACH for the issuing
of permits and licences under the
provisions of the Dutch Environmental
Management Act (*Wet milieubeheer -
Wm*) and the Pollution of Surface Waters
Act (*Wet verontreiniging
oppervlaktewateren - Wvo*)**

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Summary

REACH, the EU Regulation for Registration, Evaluation, Authorisation and Restriction of Chemicals, which is directly applicable in all member states, will enter into force on 1 June 2007. REACH must also be implemented and enforced in the Netherlands.

For this reason, the programme for the implementation of REACH in the Netherlands was launched on 1 September 2005. As part of this programme, several different projects are being carried out with the aim of ensuring that REACH will come into force in the Netherlands on time and that it can be implemented and enforced. One of these projects involves making an inventory of the consequences of REACH for the issuing of permits and licences under the provisions of the Dutch Environmental Management Act (*Wet Milieubeheer - Wm*) and the Pollution of Surface Waters Act (*Wet verontreiniging oppervlaktewateren - Wvo*) by provinces, municipalities, the Directorate-General for Public Works and Water Management (*Rijkswaterstaat*) and the water boards, and ensuring that these licensing authorities are informed about these consequences. This project has been carried out in the period September 2005 to the present (and is still current) and has been supervised by a project group under the leadership of the Ministry of Housing, Spatial Planning and the Environment (*VROM*). VROM, the Netherlands Information Centre for the Environment (*InfoMil*) and the competent authorities for implementation of the Dutch Environmental Management Act (*the Association of Provincial Authorities - IPO*) and the Pollution of Surface Waters Act (*the water boards and the Directorate-General for Public Works and Water Management*) were represented in this project group. The draft results of the project are summarised below.

In order to clearly identify the consequences, six different situations were distinguished within the project. For each of these situations, the actual consequences and the practical consequences were described and assessed on the basis of an application for a permit under the Dutch Environmental Management Act and a permit under the Pollution of Surface Waters Act.

Based on these six different situations, an inventory was made of the following main points for attention of the licensing authorities issuing permits and licences under the Dutch Environmental Management Act and the Pollution of Surface Waters Act. These licensing authorities:

1. Must indicate clearly in the preliminary consultations prior to a permit application being made what chemicals information (hazardous properties, risks, risk reduction measures) they expect the company to provide. The permit applicant must use the relevant information about chemicals, which it must have available under the REACH obligations, for its permit application. In order to make clear to the licensing authorities what REACH information the applicant must in any event be able to provide in which situations, a complete overview of such information has been prepared which will be communicated to the licensing authorities;
2. May expect companies affected by REACH to include more information in their permit application; additionally, licensing authorities issuing permits under the Pollution of Surface Waters Act may expect companies to take this information into account when implementing the general assessment methodology in respect to water (*ABM-methodiek*);
3. May request relevant additional information from a company at any time, even if such information must be deemed confidential under REACH;
4. Must exclude a permit application from further consideration if they believe, even after issuing a request for additional information, that a permit applicant is supplying insufficient information about hazardous properties, risks and measures. Insufficient information means, in any event, where a company fails to supply all relevant information for a permit application which it should and must have available under REACH;

5. Are not obliged to verify whether companies are complying with their obligations under REACH, but may check, or order the checking of, the quantity and quality of the data supplied if they suspect that the data are incorrect;
6. May include more stringent or far reaching requirements in the permit than is obligatory under REACH if other international obligations or the local situation makes it necessary;
7. Must set out in the preamble to the permit that certain specific substances which the company manufactures, uses or emits may be subject to authorisation or restriction under REACH;
8. Must urge the company to request a change of the provisions under Article 8.24 of the Dutch Environmental Management Act if the regulations attached to the permit are contrary to the necessary measures which the applicant must implement under the REACH obligations;
9. Must regularly assess whether permits which have previously been granted are still consistent with REACH and other instruments (such as Integrated Prevention Pollution Control (*IPPC*), the Water Framework Directive (*KRW*), etc.) and evaluate whether they may prioritise permit revisions for certain companies.

Additionally, a number of actions are formulated within the project which are not implemented within the project “consequences of REACH for the issuing of permits and licences under the provisions of the Dutch Environmental Management Act (*Wm*) and the Pollution of Surface Waters Act”, but which ought to be examined within another framework.

1 Introduction

1.1 Background

REACH, the EU Regulation for Registration, Evaluation, Authorisation and Restriction of Chemicals, which is directly applicable in every member state, will come into force on 1 June 2007. REACH must also be implemented and enforced in the Netherlands.

For this reason, the programme for the implementation of REACH in the Netherlands was launched on 1 September 2005. As part of this programme, several different projects are being carried out with the aim of ensuring that REACH will come into force in the Netherlands on time and that it can be implemented and enforced.

One of these projects involves making an inventory of the consequences of REACH for the issuing of permits and licences under the provisions of the Dutch Environmental Management Act (*Wet Milieubeheer - Wm*) and the Pollution of Surface Waters Act (*Wet verontreiniging oppervlaktewateren - Wvo*) by provinces, municipalities, the Directorate-General for Public Works and Water Management (*Rijkswaterstaat*) and the water boards, and ensuring that these authorities are informed about these consequences. The project bears the title “consequences of REACH for the issuing of permits and licences under the provisions of the Dutch Environmental Management Act (*Wm*) and the Pollution of Surface Waters Act”. This project is discussed in further detail in this memorandum.

Other important projects taking place within the framework of the Programme for the Implementation of REACH (PIR) are:

- Provision of information on REACH to business and industry
- Establishment of a REACH helpdesk
- How REACH will be enforced

1.2 Objectives

The aims of the project are:

1. To make an inventory of the consequences of REACH for the issuing of permits and licences under the provisions of the Dutch Environmental Management Act and the Pollution of Surface Waters Act by provinces, municipalities, the Directorate-General for Public Works and Water Management (*Rijkswaterstaat*) and the water boards, with a distinction being made between the actual consequences and the significance of those consequences for real-life practice;
2. As soon as there is clarity regarding the consequences referred to under point 1 above: to make an inventory of the wishes of the provinces, municipalities, the Directorate-General for Public Works and Water Management and the water boards with regard to the correct implementation by them of REACH when issuing permits and licences under the provisions of the Dutch Environmental Management Act and the Pollution of Surface Waters Act and, where possible, to meet those wishes;
3. To ensure that the provinces, municipalities, the Directorate-General for Public Works and Water Management (*Rijkswaterstaat*) and the water boards are informed about the consequences of REACH.

The results of the first two objectives are described in this memorandum. This memorandum forms the basis for the development of information material within this project (third objective).

1.3 Method of approach

A project group has been set up for the project “consequences of REACH for the issuing of permits and licences under the provisions of the Dutch Environmental Management Act and the

Pollution of Surface Waters Act ” which is made up of: representatives of licensing authorities issuing permits and licences under the Dutch Environmental Management Act and the Pollution of Surface Waters Act, the Netherlands Information Centre for the Environment (*InfoMil*), the Directorate-General for Public Works and Water Management (*Rijkswaterstaat*), the Netherlands Institute for Inland Water Management and Waste Water Treatment (*RIZA*), the Municipal Health Services (*GGD*) and the Ministry of Housing, Spatial Planning and the Environment (*VROM*). The memorandum before you was written by InfoMil and VROM and was discussed several times in the project group. The licensing authorities issuing permits and licences under the Dutch Environmental Management Act and the Pollution of Surface Waters Act have also reviewed the contents of this memorandum in relation to three actual examples of issued permits (one permit issued under the Pollution of Surface Waters Act to a manufacturer/importer and one permit issued under the Dutch Environmental Management Act and the Pollution of Surface Waters Act to a downstream user).

1.4 Structure of this memorandum

Section 2 of this draft memorandum contains a description of the current practice for issuing licences and permits pursuant to the Dutch Environmental Management Act and the Pollution of Surface Waters Act with respect to chemicals. Section 3 contains an overview of the actual consequences of REACH for licensing authorities issuing permits and licences under the Dutch Environmental Management Act and the Pollution of Surface Waters Act and the significance of those consequences for real-life practice. Section 4 looks at the consequences in relation to time. This is important since REACH will be phased in and the consequences of REACH for licensing authorities issuing permits and licences under the Environmental Management Act and the Pollution of Surface Waters Act will therefore also become evident in phases. Section 5 contains conclusions and recommendations for further action. The abbreviations used in the memorandum are explained in annex 1.

1.5 Definition of the project

The general rule for the definition of the project is that direct consequences of REACH for the issuing of permits and licences under the provisions of the Dutch Environmental Management Act and the Pollution of Surface Waters Act themselves fall within the scope of this project, but that consequences for other instruments, which can themselves, in turn, have consequences for the issuing of licences and permits, fall outside the scope of the project. An example of this would be the possible consequences of REACH for the Netherlands Emission Guidelines for Air (*NeR*). The reasons for excluding this last category of consequences from the scope of the project are that:

- Decision making cannot be undertaken by the project group studying the consequences of REACH for the issuing of permits and licences under the provisions of the Dutch Environmental Management Act and the Pollution of Surface Waters Act, but rather takes place within separate frameworks;
- Consequences cannot be identified until a later stage;
- Consequences will have to be identified by other parties, and not by the project group.

Based on the above, the project is defined as follows. The project group wishes nonetheless that the actions set out below (which are outside the scope of this project) are carried out. This is also necessary, in part, in order to ensure that the competent authorities can be fully informed in due course.

International instruments

The relationship between REACH and other international measures which have consequences for the issuing of permits and licences under the provisions of the Dutch Environmental Management

Act and the Pollution of Surface Waters Act (such as the Water Framework Directive (*KRW*) and Integrated Prevention Pollution Control (*IPPC*)) must be examined. This falls outside the scope of the present project, however.

Environmental permit

A general point deserving attention is that permits which are issued under the Dutch Environmental Management Act and the indirect discharges which are currently governed by permits issued under the Pollution of Surface Waters Act will probably be incorporated into the environmental permit. While this may result in a change of competent authority, the environmental permit is not expected to lead to relevant changes in the permit or licence issuing system as a whole. The environmental permit is therefore not discussed in further detail in this memorandum.

Modernisation of general rules

A consequence of the modernisation of the general rules is that, in the near future, the general rules will come to apply to far more companies than is presently the case and that far fewer companies will therefore require a permit or licence issued under the Dutch Environmental Management Act or the Pollution of Surface Waters Act. This means that many more companies will merely have to satisfy a requirement to report a new establishment or activity. For companies falling under the new 8.40 General Order in Council, which is expected to come into force in 2007, REACH will probably have (effectively) far fewer consequences because it is expected that within the General Order in Council there will be fewer possibilities to use the additional information becoming available under REACH.

The consequences of REACH for provinces, municipalities, the Directorate-General for Public Works and Water Management and the water boards, who are tasked with helping to implement 8.40 General Orders in Council, fall within the scope of this project. Any consequences of REACH for the contents of 8.40 General Orders in Council fall outside the scope of this project.

How REACH will be enforced

The implementation of the enforcement (structure) of REACH in the Netherlands is specified in detail within the project "How REACH will be enforced" and will not be further discussed in this memorandum. Enforcement of REACH will be in the hands of the VROM Inspectorate, the Health and Safety Inspectorate (*Arbeidsinspectie*) and the Food and Consumer Product Safety Authority (*Voedsel- en Warenautoriteit - VWA*). Within the project "How REACH will be enforced" there will nonetheless be an assessment of whether municipalities, provinces, the Directorate-General for Public Works and Water Management and the water boards can/must include aspects of REACH when enforcing the permits and licences issued under the provisions of the Dutch Environmental Management Act and the Pollution of Surface Waters Act (which, in time, will be replaced by an environmental permit). In this regard it makes most sense for municipalities, provinces, the Directorate-General for Public Works and Water Management and the water boards not to actively monitor companies' compliance with REACH, but to report to the VROM Inspectorate any instances of a possible breach of REACH which they may identify while enforcing the permit or licence.

GHS and ABM

REACH includes the obligation to collect data on the properties of chemicals. The criteria for determining the hazardous properties of chemicals as well as the criteria for labelling based on those chemical properties are laid down in the amended Directive 67/548/EEC on the classification, packaging and labelling of dangerous substances. The European Union (EU) will issue a regulation within one to two years that will provide for the implementation of the GHS (Globally Harmonised System for dangerous goods). The GHS is an internationally harmonised

standard for hazard classification which replaces, among other things, the current regulations for classification and labelling (C&L).

The criteria in the GHS regulation differ in certain respects from the current C&L criteria and are also expected to differ slightly from the ABM criteria (ABM = general assessment methodology pursuant to which emitted substances are divided into classes) which are used for the issuing of permits under the Pollution of Surface Waters Act.

It will be necessary to align the ABM with the REACH regulation as soon as it enters into force and, more specifically, when GHS is implemented by the EU. However, this falls outside the scope of the project to determine the consequences of REACH for the issuing of permits and licences under the provisions of the Dutch Environmental Management Act and the Pollution of Surface Waters Act.

GHS and ADR

As the purpose of the GHS is also to harmonise the criteria for classification for transport, there will be a change in the ADR classification which is used, among other things, in the PGS-15 (publication series for hazardous substances) for the storage of chemicals. This change in the ADR classification is, however, quite separate from the European implementation of the GHS regulation. Any amendment of the ADR takes place at UN level and will probably take longer than the implementation of GHS by the EU. This also falls outside the scope of the project to determine the consequences of REACH for the issuing of permits and licences under the provisions of the Dutch Environmental Management Act and the Pollution of Surface Waters Act.

NeR and ABM

The NeR (Netherlands Emission Guidelines for Air) advisory group has decided to incorporate the direct consequences of REACH for the issuing of permits under the Dutch Environmental Management Act, as described in sections 3, 4 and 5 of this memorandum, in the NeR. The NeR advisory group has not yet decided on the manner in which this will take place.

Additionally, there will be an assessment in due course of the possibilities for incorporating the indirect consequences of REACH in the NeR. In common with the current regulations on chemicals, REACH provides for restrictions for certain chemicals. Furthermore, within the framework of REACH, a candidate list of substances which may be eligible for authorisation will be drawn up as will a list of chemicals for which authorisation is mandatory. The effect of these restrictions and lists should extend to the issuing of permits under the Dutch Environmental Management Act, for example, by attaching stringent emission requirements to these chemicals via the NeR. REACH also ensures that information becomes available on hazardous properties, risks and measures in relation to most chemicals. Many chemicals are currently not specifically listed as chemicals in the NeR, however, but only as part of a class of chemicals. The discussion on the indirect consequences of REACH for the NeR falls outside the scope of this project, however, and will have to be held specifically in relation to the NeR.

No such discussion is necessary for the issuing of permits under the provisions of the Pollution of Surface Waters Act since information on hazardous properties, risks and measures (which determines whether a chemical is included on the candidate list of authorised chemicals or on the list of chemicals for which authorisation is mandatory, or whether a restriction is imposed in respect of a chemical) is already included in the ABM methodology. The project group is nonetheless of the opinion that the results of this project should be integrated in the ABM methodology in due course. The most suitable moment for this would be at the same time that the ABM needs to be amended to bring it in line with the Water Framework Directive (*KRW*). This falls outside the scope of this project, however.

National priority substances list and blacklisted chemicals

The relationships between the national list of Dutch priority substances and the General Order in Council listing blacklisted chemicals on the one hand, and the substance lists under REACH on the other (candidate list of substances for which authorisation is mandatory, list of substances for which authorisation is mandatory and list of substances which are subject to restrictions) should be clearly identified in due course and, where relevant, be communicated to the licensing authorities. This falls outside the scope of the present project, however.

1.6 Legal review of the contents of this memorandum

This memorandum has been reviewed from a legal perspective by the Ministry of Housing, Spatial Planning and the Environment (*VROM*) and the Ministry of Transport, Public Works and Water Management (*V&W*). The results of this review have been incorporated in the memorandum.

2 The issuing of licences and permits under the provisions of the Dutch Environmental Management Act and the Pollution of Surface Waters Act in practice

2.1 Introduction

REACH will have consequences in particular for the information which companies must provide with respect to chemicals when applying for a permit or licence and which subsequently allows the competent authority to carry out an adequate evaluation of the impact of such chemicals on the environment (including surface water). Before discussing in detail the nature and scope of these consequences, however, this section will firstly review the current obligations with respect to the submission and evaluation of a permit application.

Generally speaking, in the case of an application for a permit under the Dutch Environmental Management Act as well as an application for a permit under the Pollution of Surface Waters Act, the permit applicant is responsible for the information which it provides to the licensing authority as part of its permit application. It is then up to the licensing authority to decide whether such information is sufficient for it to deem the permit application admissible and therefore to commence processing of the application. The Netherlands Emission Guidelines for Air (NeR) stipulates that the emissions situation of the industrial institution or establishment for which the permit application is lodged must be discussed in the preliminary consultation stage prior to the submission of the application. During this discussion, it is necessary, among other things, to make known which substances are emitted and what the emissions concentration and the scrubbed mass flow (in kg/s) of the emitted substances is.

It is therefore important to ensure that all relevant information on chemicals is available in the preliminary consultation stage. If a company submits a permit application without this information, and also fails to provide the information after receiving a request for additional information, there will be no other option than to exclude the permit application from further consideration. This also applies to discharges into surface water.

2.2 The issuing of licences and permits under the Dutch Environmental Management Act
Under Article 5.1 of the Dutch Environmental Management Act (Establishments and Licences) Decree, sufficient information, among other things, must be provided with an application for a permit to establish or operate an industrial establishment. Such information enables the impact on the environment resulting from the normal operation of the industrial establishment to be determined and allows regulations or other provisions to be included in the permit issued under the Dutch Environmental Management Act with respect to the manufacture, use and emissions of chemicals.

Part of the data which must be provided with any permit application is information on the properties of emitted chemicals. The NeR sets out how to determine the occurrence of relevant emissions of the substances by defining threshold values, known as “threshold mass flows”. Any emitted chemicals included on a specially defined chemicals list are subject to a minimisation obligation. The list is prepared on the basis of the criteria applying to substances that can be

classified as substances of very high concern (referred to in Dutch as ZEZ). The list of substances subject to a minimisation obligation is regularly updated.

2.3 The issuing of licences and permits under the Pollution of Surface Waters Act

With regard to discharges into State-managed water bodies, Article 7, Paragraph 2 of the Pollution of State-managed Water Bodies (Implementation) Decree sets out which data an applicant must provide when applying for a permit under the Pollution of Surface Waters Act. More specifically, the application must, pursuant to the above provision, contain a description of the nature, composition, properties and quantity of the raw and ancillary materials, intermediates and end products to the extent such materials and products may, or may not, end up directly in the surface water. There must also be a description of the nature and scope of the impact on the surface water resulting from such discharge.

With regard to discharges into non-State managed water bodies, the regulations of the water boards stipulate that such information must be included in the application for a permit under the Pollution of Surface Waters Act. Regulations relating to discharges may subsequently be added.

The general assessment methodology in respect of water (*Algemene BeoordelingsMethodiek*, or *ABM*) should be used to determine the harmfulness of discharges. This methodology is used to classify the water toxicity of substances and preparations on the basis of their properties into categories. These categories indicate the intensity of effort required to reduce the volume of discharges into water. The ABM is designed to apply to direct and indirect discharges under the Pollution of Surface Waters Act and to indirect discharges under the Dutch Environmental Management Act. It complies with current European regulations with regard to the classification, packaging and characterisation of substances and preparations. The ABM requires that information on the water toxicity of substances and preparations be provided to the competent authority by the applicant. It relates to all raw and ancillary materials as well as intermediates and end products which are or may end up or which are or may be discharged into water. Since 1 August 2002, manufacturers have been expected to screen 'their' substances and preparations according to the ABM and to provide their customers (wholesalers) and users with the results of this screening. This procedure is in line with the widely supported programmes of "responsible care" and "product stewardship" within the chemical industry.

2.4 Circular

The circular on the Availability of Substance Data of 7 October 2003 dealing with the necessary data on chemicals which is needed to allow careful and proper decision making with respect to applications for permits or licences under the Dutch Environmental Management Act or the Pollution of Surface Waters Act sets out that companies must supply sufficient data on the hazardous properties and risks of substances when submitting an application for a permit under the Dutch Environmental Management Act or the Pollution of Surface Waters Act, to allow the licensing authority to make a proper assessment when deciding on the application. The licensing authorities issuing permits and licences under the Dutch Environmental Management Act and the Pollution of Surface Waters Act are responsible for ensuring that the company does actually supply the necessary information in order to allow for careful and proper decision making. To this end, they have the distinct possibility, when considering an application for a permit and an amendment to a previously issued permit, to make an additional request to the permit holder/applicant for the necessary information. If, in the licensing authority's opinion, the permit applicant provides insufficient information on hazardous properties, risk and measures, and this continues to be the case after an additional request for information has been made, the licensing authority must exclude the permit application from further consideration.

3. Overview of consequences

3.1. Introduction

In order to clearly identify the consequences, six different situations are distinguished. This distinction into six situations has been made possible by making an inventory of the significance for the issuing of licences and permits under the Dutch Environmental Management Act and the Pollution of Surface Waters Act, in cooperation with the licensing authorities responsible for issuing licences and permits under the Dutch Environmental Management Act and the Pollution of Surface Waters Act, and based on the REACH regulation,.

Evaluation of the admissibility of an application for a (revision) permit

1. The permit applicant must use the information on chemicals relevant to the permit application, which it must have available under the REACH obligations, for its permit application. The licensing authority may refuse to process an application for a (revision) permit if it considers the applicant to have supplied it with insufficient information on the hazardous properties, risks and measures.

Evaluation of whether the issuing of the (revision) permit is not contrary to the REACH obligations (and other international obligations)

2. A licensing authority may not act contrary to the REACH obligations (and other international obligations (such as the Water Framework Directive (KRW), IPPC, OSPAR, POP treaties, etc.) when issuing the permit.

Inclusion of additional obligations in the permit

3. A licensing authority may specify additional requirements when issuing the permit. These may be requirements arising from IPPC or the KRW, for example, as well as requirements resulting from local non-compliance with environmental quality standards.

Use of additional REACH information when drafting the permit

4. The licensing authority uses the REACH information supplied by the permit applicant when drafting the permit.

Updating of the permit because the permit regulations are not consistent with REACH

5. The fact that the REACH regulation directly places the onus on industry to comply with certain obligations and has priority over national rules and laws may mean that the present permit contains regulations which are not consistent with REACH obligations or with data and/or new insights into the environmental consequences of certain substances held or accessible by the applicant under the REACH obligations.

Relationship of REACH to other legislation

6. It must be clear to provinces, municipalities, the Directorate-General for Public Works and Water Management and the water boards what the relationship is of REACH to other legislation which they are responsible for implementing, such as the 8.40 General Orders in Council and the Government Information (Public Access) Act (*WOB*).

The actual consequences and their practical significance in the six different situations are detailed below.

In respect of these distinct situations, the focus is placed entirely on the consequences of REACH for the issuing of permits in relation to the manufacture, use and emissions of chemicals into

water and air, since REACH will have (virtually) no consequences for other matters than the issuing of licences and permits. The reasons for this are briefly described below for each part of the permit issued under the Dutch Environmental Management Act.

- Waste materials as a substance group are entirely excluded from the scope of REACH. Regulations pertaining to permits which focus specifically on the handling, storage, separation or prevention of the occurrence of these substances will therefore not be impacted by REACH;
- The PGS (publication series for hazardous substances) guidelines, which use the ADR labelling of a substance to identify the properties specific to a chemical substance and not the individual properties themselves, are used to determine the permit regulations attached to the storage of substances. The various properties of a chemical substance are already included in this ADR labelling. As a result of new labelling rules under the GHS and the harmonisation of labelling under REACH, it is possible that certain substances and preparations will receive different labelling. Therefore, the regulations attached to permits can only change indirectly due to the fact that the PGS guidelines possibly also attach different regulations to another type of labelling;
- With respect to fire safety, a permit includes, among other things, regulations on the fire-extinguishing media. These regulations focus in particular on maintenance, inspection and placement and not on the release or escape of the fire-extinguishing media. These regulations will therefore also not be impacted by REACH;
- With respect to soil, each emission into the soil is considered as an instance of contamination unless the company can prove otherwise. In this case, the REACH information may serve as a source of information for the permit applicant. Annex IV of REACH, for example, lists substances which are considered as posing minimum risk.

3.2. Description of the situations

3.2.1. Evaluation of the admissibility of an application for a (revision) permit

Actual consequences

The current situation outlined

As previously stated in Paragraph 2.4, a circular on the required data on chemicals which are needed to allow careful and proper decision making with respect to applications for permits or licences under the Dutch Environmental Management Act or the Pollution of Surface Waters Act was sent on 7 October 2003. This circular sets out that companies must supply sufficient data on the hazardous properties and risks of substances when submitting an application for a permit under the Dutch Environmental Management Act or the Pollution of Surface Waters Act, to allow the licensing authority to make a proper assessment when deciding on the application. Consequently, licensing authorities responsible for issuing permits and licences under the Dutch Environmental Management Act and the Pollution of Surface Waters Act have the distinct possibility, when considering an application for a permit and an amendment to a previously issued permit, to request the permit holder/applicant to supply relevant information. If, in the licensing authority's opinion, the permit applicant provides insufficient information on hazardous properties, risks and measures, and this continues to be the case after a request for additional information has been made, the licensing authority must exclude the permit application from further consideration.

As previously stated in Paragraph 2.2, under Article 5.1 of the Dutch Environmental Management Act (Establishments and Licences) Decree, sufficient information, among other things, must be provided with an application for a permit to establish or operate an industrial establishment. Such

information enables the impact on the environment, resulting from the normal operation of the industrial establishment, to be determined. In addition to data on emissions into the air, water and soil, this provision also oversees the efficient removal of waste materials. Part of the data which must be provided with a permit application is information on the properties of emitted chemicals. In practice, the licensing authority issuing permits under the Dutch Environmental Management Act elects either not to process the application if certain data are missing or, alternatively, to take a worst-case approach.

Paragraph 2.3 already described that, with regard to discharges into State-managed water bodies, Article 7, Paragraph 2 of the Pollution of State-managed Water Bodies (Implementation) Decree sets out which data an applicant must provide when applying for a permit under the Pollution of Surface Waters Act. More specifically, the application must, pursuant to the above provision, contain a description of the nature, composition, properties and quantity of the raw and ancillary materials, intermediates and end products to the extent such materials and products may, or may not, end up directly in the surface water. It must also include a description of the nature and scope of the impact on the surface water resulting from that discharge. With regard to discharges into non-State managed water bodies, the regulations of the water boards stipulate that such information must be included in the application for a permit under the Pollution of Surface Waters Act. In practice, the licensing authority issuing permits under the Pollution of Surface Waters Act usually elects not to exclude the application from further consideration in the event data are missing; if data are missing, the licensing authority issuing permits under the Pollution of Surface Waters Act usually elects to take a worst-case approach.

In the case of the issuing of permits and licences under both the Dutch Environmental Management Act and the Pollution of Surface Waters Act, it should be understood that taking a worst-case approach is not accepted by the Council of State (*Raad van State*) (see the Broomchemie case) if, for example, there is already the intention, as expressed in national or international policy, to make the manufacture or application of a chemical subject to restrictions. In the context of REACH, this may relate to chemicals which are already on the candidate list of substances which may soon require mandatory authorisation. Additionally, it is debatable whether taking a worst-case approach is consistent with the requirement of careful preparation as defined in Article 3.2 of the General Administrative Law Act (*Algemene wet bestuursrecht*). For this reason, it is expressly recommended in the circular on the Availability of Substance Data of 7 October 2003 that sufficient information on substances be obtained before any decisions are made. According to this circular, a permit application which contains insufficient data, even after repeated requests, must, accordingly, not be processed.

The future situation outlined

Importers and manufacturers and, in certain cases, users also, are obligated under REACH, for certain data (see Chapter 4), to register information on the hazardous properties, the risks associated with substances and the measures to restrict these risks with the European Chemicals Agency (hereinafter: the Agency) in Helsinki. A number of substance groups (including waste materials) are entirely excluded from the scope of REACH. At the same time, a number of other specific substance groups are excluded from certain important provisions of REACH.

Within REACH, a clear distinction is made between information which may not be deemed confidential (Article 118, Paragraph 1) and information which is normally deemed confidential (Article 118, Paragraph 2). Among other things, the naming, classification and labelling, physical-chemical, toxicological and eco-toxicological information and data on the weight class in which a substance is registered are not deemed confidential.

Details on the full composition of the substance or preparation and the links between a manufacturer and its downstream users are examples of information which are normally deemed

confidential. In Chapter 9 of the Dutch Environmental Management Act it has been decided not to designate licensing authorities responsible for issuing permits and licences under the Dutch Environmental Management Act and the Pollution of Surface Waters Act as competent authorities for REACH¹. This means, among other things, that they therefore do not have direct access to the confidential REACH data which are administered by the Agency in a database since that right is reserved solely for the designated competent authority, in this case the Minister of Housing, Spatial Planning and the Environment (VROM²) and therefore also for the competent authority charged with ensuring compliance (in any event the VROM inspectorate). The public REACH data are freely accessible. Licensing authorities may nonetheless request a company to provide all information which is necessary in order to make a decision on the application, even if such information is deemed confidential under REACH.

In concrete terms, REACH will result in far more information becoming available on the chemicals manufactured, traded or used in a company. Companies that *manufacture* or *import* chemicals must ensure that they have the registration dossier available (technical dossier and, where applicable, a chemical safety report). The company must, where applicable, submit the data from this dossier together with the permit application. It should be noted, however, that companies which only import chemicals are only obligated under the Dutch Environmental Management Act if they also store, transship or (in the case of explosive substances, preparations or products, for example) package or re-package these substances. Companies *using* chemicals or preparations are not required to ensure they have the data from the technical dossier available. They must nonetheless be able to produce a safety data sheet (SDS) setting out specific information with recommended control measures in the case of identified use. If the user uses a substance or preparation in a manner that is not identified, the user will be expected to have drawn up a chemical safety report itself. Also in these cases, the permit applicant must supply as much data as possible itself when submitting its application for a permit. It can retrieve these substance data through the SDS as well as through the public part of the Agency's database.

Practical significance

Ideally, the applicant supplies all the data it is obligated to have under REACH, to the extent such information is relevant to the permit application. In any event, the licensing authority is entitled to request all relevant data that the company ought to hold, including confidential information. In order to clarify to the licensing authorities which information the permit applicant must be able to supply in which situations, an overview will be made of such information and this will be communicated to the licensing authorities.

As more information will become available due to REACH, there should be fewer instances of a permit application not containing enough data in the opinion of a licensing authority. However, it is certainly not the case that compliance with REACH automatically means that a permit application contains sufficient data. There are various reasons for this:

¹ The Official Explanatory Memorandum to Chapter 9 of the Environmental Management Act categorises the nature of the tasks assigned to the competent authority as follows: tasks in preparation for decision-making, monitoring tasks, research, taking measures, administrative tasks, cooperation, provision of information.

² By ministerial order, other ministers may also be designated as the competent authority for matters relating to their official field; for example, the Minister of Social Affairs and Employment for matters related to employee protection and the Minister of Health, Welfare and Sport for matters related to public health and consumer protection.

- A substance is manufactured/imported in quantities of less than 1 tonne per year per manufacturer/importer and is therefore not subject to the main obligations under REACH³;
- The applicant has not supplied all data in its permit application which are known under REACH and which are necessary in order to decide on the application;
- In the transitional situation (up to 11 years after the REACH regulation comes into force) it is possible that a substance need not yet be registered pursuant to REACH and that the data therefore also do not yet need to be available under REACH. Section 4 contains further information on the phasing of the obligations under the REACH regulation;
- The local situation, or other statutory obligations, may require that the licensing authority will consider it necessary that more data be supplied than is obligatory under REACH.

Regarding the results of this project, it must be clearly communicated to the licensing authorities that compliance with REACH does not mean that the licensing authority ought not be permitted to request additional information from the company and, in the interests of due care, even ought to request additional information in specific cases. The circular of 7 October 2003 dealing with this issue therefore continues to apply in all respects for the time being. There are plans nonetheless to issue an updated version of this circular. The above means that if a permit application contains too little information regarding the hazardous properties, risks or measures that are taken in order to control the risks sufficiently, a worst-case approach will not be taken, but that, in the interest of careful preparation, the company will be asked to supply additional information and, if it fails to do so, the permit application will not be processed. This certainly applies in those cases where the substances concerned are subject to mandatory registration pursuant to REACH. This can eventually result in no permit being granted, and a company therefore being prohibited to manufacture, use or emit a substance.

3.2.2 Evaluation of whether the issue of the (revision) permit is not contrary to the REACH obligations and other international obligations

Actual consequences

In the project *How REACH will be enforced*, a summary overview has been made of the obligations to which companies may be subject under REACH. The precise nature of these obligations depends on the role which various companies perform in relation to the REACH legislation. The licensing authority may not act contrary to the REACH obligations (or other international obligations (KRW, the Water Framework Directive (IPPC), OSPAR, POP treaties, etc.) when issuing a permit (Article 8.9 of the Dutch Environmental Management Act). If the licensing authority is of the opinion that the permit application does not comply with the REACH obligations, it must refuse the permit application.

Practical significance

In this situation there is a difference between applications for a permit under the Dutch Environmental Management Act and applications for a permit under the Pollution of Surface Waters Act since permits issued under the Dutch Environmental Management Act regulate not just emissions into the air but also the manufacture and use of substances while permits issued under the Pollution of Surface Waters Act only regulate the discharge of substances. In the case

³ These substances are nonetheless not entirely excluded from the scope of REACH. These substances can still be subject to the restrictions or the authorisation requirement set out in annexes XVII and XIV, respectively, of the regulation. Furthermore, these substances must be classified, where necessary a safety data sheet (SDS) must be drawn up for these substances and information must be collected and, where applicable, passed on to downstream users and distributors for substances which do not need to be classified.

of applications for a permit under the Dutch Environmental Management Act as well as applications for a permit under the Pollution of Surface Waters Act, the licensing authority has no statutory obligation to check whether the permit application complies with the REACH obligations. Such an obligation does exist, however, in the case of the IPPC guideline, for example, where there is a statutory duty, via implementation in the Dutch Environmental Management Act, to check whether the permit application complies with the BAT (Best Available Techniques) requirement.

In the case of both the issuing of permits under the Dutch Environmental Management Act and the issuing of permits under the Pollution of Surface Waters Act, the burden of proof for compliance with the REACH obligations lies with the company.

In order to ensure careful preparation, the licensing authority is nonetheless required, to check whether the information supplied by the company on compliance with the authorisation requirement and the restrictions is correct. Part of the information supplied in order to comply with the authorisation requirement under REACH is information on possible alternative substances or technologies and, if suitable alternatives are available, a plan for the introduction of substitution. Only in this way is it possible to avoid a permit eventually being granted which is contrary to the REACH obligations.

The licensing authority must then state in the preamble, in order to comply with the obligation to provide reasons pursuant to the General Administrative Law Act (*Algemene wet bestuursrecht*), that when evaluating the permit application it has checked whether the substances mentioned in the permit application are subject to an authorisation requirement or restrictions.

The licensing authority may also check, or have checked, the quantity and quality of the data on the substance(s) if it suspects that the data are incorrect. It may consult the public part of the Agency's database to do this. If it is not possible to carry out the desired check by these means, the licensing authority may also use other databases, such as the website www.stoffen-risico.nl, or, in exceptional cases, it may contact the Dutch National Institute of Public Health and Environmental Protection (*RIVM*) itself. The permit applicant is and remains responsible, however, for the reliability of the information supplied. Nonetheless, the licensing authority should state in the preamble that certain substances that will be emitted or which are used may be subject to authorisation or restrictions under REACH. The licensing authority does not check when assessing a permit application whether the company is in compliance with other REACH obligations (such as a registration obligation).

3.2.3 Inclusion of additional obligations in the permit

Actual consequences

The fact that a permit applicant possesses data ensuing from the REACH obligations and complies with these obligations does not automatically mean that the permit will also be issued for environmental protection reasons. A licensing authority may also refuse to issue a permit or set additional requirements if it considers that the emissions into the air and/or into the water pose unacceptable risks for the environment, even if the permit applicant complies with the control measures which are derived from the REACH obligations. There may be very good reasons for prescribing far-reaching measures in the permit than those derived from the chemical safety analysis/analyses which must be drawn up according to REACH, such as: IPPC, KRW, the

blacklisted substances for the issuing of permits under the Pollution of Surface Waters Act ⁴, local breaches of environmental quality standards, etc.

REACH contains regulations relating to the manufacture and use of substances and not to emissions. It will never be possible to prescribe specific rules relating to emission and discharge in REACH due to local differences. If a licensing authority has valid reasons for assuming that, while a substance may comply with the provisions of the REACH regulation, it nonetheless poses a risk to human health and the environment, that licensing authority may include suitable emission-restrictions in the permit.

Furthermore, it should be understood that a number of exceptions to REACH exist, such as the exception applying to waste materials, which must also be evaluated on the basis of their admissibility as part of the permitting process.

Practical significance

With REACH it is only possible to make agreements at a community level. If a licensing authority (issuing permits under the Dutch Environmental Management Act as well as under the Pollution of Surface Waters Act) believes that other (international) instruments - such as IPPC, Water Framework Directive (KRW), the blacklisted substances in respect of the permitting process under the Pollution of Surface Waters Act and/or the local situation - make it necessary to set more stringent requirements for the manufacture, use or emission of a substance than those which would ensue directly or indirectly from REACH, then it has the power to do so. One reason for doing so may be that the permit application does not comply with BAT, or that environmental quality standards are supposedly being breached at a local level by the emissions/discharges for which the permit application is being made. Both the Netherlands Emission Guidelines for Air (*NeR*) and the general assessment methodology in respect of water (ABM) already include in their methodology an assessment of emissions against the environmental quality standards.

The new 8.40 General Order in Council under the Dutch Environmental Management Act will probably also include the possibility for the competent authority to set far-reaching requirements if the local situation makes this necessary.

3.2.4 Use of additional REACH information when drafting the permit

Actual consequences

Situation 3.2.1 above describes which information the permit applicant must supply to the licensing authority (both now and after REACH enters into force). Based on the information supplied by the permit applicant, the licensing authority assesses whether the application should or should not be processed. If the licensing authority decides to process the application, the information supplied by the applicant must, as a rule, be used for drafting the permit.

With the introduction of REACH, it is becoming increasingly clear to companies that they must possess data on substances and such data are also becoming more readily available. In this sense, REACH supports the permit granting process.

Based on the available data, the licensing authority can determine whether an emission/discharge should be deemed acceptable and whether adequate measures are being taken to restrict the

⁴ The provisions for blacklisted substances for the issue of permits under the *Pollution of Surface Waters Act* (76/464/EEC) will continue to apply until new provisions/standards are finally determined under the Water Framework Directive (KRW).

discharge where necessary. A specific point for attention is Article 18 Paragraph 4 of REACH. This paragraph details that on site isolated intermediates must be used under strictly controlled conditions if they are to be eligible for a less stringent regime of registration. The REACH regulation describes in greater detail what is understood under strictly controlled conditions. The permit contains the regulations which identify whether there is evidence of strictly controlled conditions.

As previously described in situations 3.2.2 and 3.2.3, a licensing authority may refuse to issue a permit or set additional requirements if it believes the emission into the air and/or water has unacceptable adverse consequences for or effects on the environment, even if the permit applicant is complying with the control measures derived from the REACH obligations.

Practical significance

In the case of the issuing of licences and permits under both the Dutch Environmental Management Act and the Pollution of Surface Waters Act, a distinction must be made between the manufacturers/importers of substances, the users of substances and the users of preparations. In the case of permit applications made by manufacturers/importers, the applicant can use the additional information which is available due to REACH for its permit application and the licensing authority can use this additional information for drafting the permit. After all, the manufacturer/importer has access to all the data from the registration dossier. In the case of users of substances and preparations, the additional information which becomes available due to REACH must be transposed into the information which is supplied via the safety data sheets (SDS). The reason for this, particularly in the case of preparations consisting of many different substances, is that it is virtually impossible for the applicant as well as the licensing authority to include the information from all these registration dossiers of all the substances used when considering the permit application or drafting the permit. Hence, the correct transposition of the information from these dossiers into the safety data sheet by the manufacturer of the preparation represents a crucial step. The reason is that the information contained in the SDS forms the basis for the issuing of a permit following receipt of a permit application. At the same time it is important to emphasise that what is essential for the issuing of an environmental permit is not so much the substances and preparations that are used as is the substances and preparations that are actually emitted into the environment.

In the case of applications for a permit under the Pollution of Surface Waters Act, the permit applicant will have to include the information which is relevant for the permit application and which is available under the REACH obligations in the chemical evaluation which it must carry out as part of the general assessment methodology in respect of water (*ABM-methodiek*) in relation to the permit under the Pollution of Surface Waters Act. The licensing authority responsible for issuing permits under the Pollution of Surface Waters Act does not expect the company to provide a definite answer in its application as to whether it complies with the REACH obligations, but rather expects information about the permissibility of the discharge. The situation is different in the case of a permit under the Dutch Environmental Management Act. When applying for a permit under the Dutch Environmental Management Act, the company will be required to supply information on the substances it manufactures, uses and emits. This information relates, among other things, to the following data: which substances, quantities, hazardous properties, risks and the measures to control these risks. The company must also specify which substances are subject to an authorisation obligation or restrictions. The licensing authority will use this information when considering and drafting the permit. In relation to the permit issued under the Dutch Environmental Management Act, there is no methodology which ensures that the additional information which becomes available pursuant to REACH is also taken into account in the permit application or permit issuance. Nevertheless, this does not

represent a significant change relative to the situation that existed prior to REACH entering into force, since the company was also required in the previous situation to supply final information on substances which the licensing authority would then use to draft the permit. In the case of the issuing of permits under the Dutch Environmental Management Act, an assessment of the expected concentrations in the environment as a result of emissions against the maximum permissible risk levels or target values is only carried out in conformity with the Netherlands Emission Guidelines for Air (*NeR*) in the case of substances which are subject to a minimisation requirement.

Precisely how a licensing authority must deal with a substance appearing on the candidate list of or a list of substances for which authorisation is mandatory or a substance subject to a restriction differs between issuers of permits under the Dutch Environmental Management Act and issuers of permits under the Pollution of Surface Waters Act.

In the case of permits issued under the Pollution of Surface Waters Act, the general assessment methodology in respect of water (*ABM-systematiek*) should already take sufficient account of those properties of substances which ensure that a substance appears on the candidate list. For example, PBT substances are already blacklisted chemicals for which all discharges must be prevented if at all technically possible.

In the case of permits issued under the Dutch Environmental Management Act, there is no automatic methodology which ensures that a more stringent emission regime will apply to such *substances of very high concern*. A discussion should be held on this matter in the context of the Netherlands Emission Guidelines for Air (*NeR*). The Netherlands Emission Guidelines for Air (*NeR*) could offer possibilities, for example, in respect of classification (and the related emission requirement) of a substance in the *NeR* as well as having or not having a minimisation requirement. It is expected that no more than a few hundred substances will end up on the candidate list for substances requiring authorisation and that this list will not be available until the end of 2008.

3.2.5 Updating of the permit because the regulations attached to the permit are not consistent with REACH

Actual consequences

Every part of the REACH regulation is binding and REACH is directly applicable in every member state, including the Netherlands. For this reason – and contrary to directives – it is not necessary, and even forbidden, to incorporate the contents of the regulation in national regulations. For this reason, no provisions of REACH may be incorporated into permits. Due to this direct applicability, it is possible that, in combination with the fact that REACH obligations could not be taken into account when the present permits were being granted, a situation arises in which the regulations attached to the current permits are not compatible with the obligations arising from the REACH regulation (they may go further or, conversely, be less stringent than the obligations arising from the REACH regulations).

Where the regulations attached to permits go further than the obligations arising from the REACH regulation, such permit regulations will continue to apply and no problem will arise. This is because a permit may include additional requirements to restrict emissions, even where such requirements indirectly result in restrictions in the manufacture and/or use of a substance. A permit may also include regulations which are directly intended to restrict the manufacture and/or use of substances for the establishment concerned.

In the event the regulations attached to a current permit are less stringent than the obligations arising from the REACH regulation, those parts of the permit that are non-compliant [with the REACH regulation] will cease to be applicable and the obligations arising from the REACH regulation will apply to those parts. In such cases, the licensing authority may decide to update the permit issued under the Dutch Environmental Management Act pursuant to Article 8.22 of the Dutch Environmental Management Act. The conflict between provisions under the REACH regulation and permit regulations will probably be most evident with regard to the following.

Substances for which authorisation is mandatory

Under REACH, certain substances will be subject to mandatory authorisation. These substances may then only be manufactured or used under strict conditions and it is assumed that they will be replaced in the future on the basis of a substitution plan as and when suitable replacement becomes possible. It is very likely that in an existing situation such tight restrictions will not have been included in the regulations attached to the permit.

Substances subject to restrictions

The present restrictions under REACH have been copied from existing European and national laws and rules and the existing permits should therefore be compatible with these restrictions. This does not apply, however, to new restrictions specified under REACH.

Identified use

In the case of substances which are registered under REACH with the Agency, but whose use for which a permit or licence under the Dutch Environmental Management Act or the Pollution of Surface Waters Act was granted, is not registered with the Agency, the permit holder (company) must, under REACH, draw up a chemical safety report. The company must also report the use of such substances to the Agency as non-identified use. If this is not done, the substance may not be used for that particular application. This will not be necessary if the user uses less than 1000 kg of that substance per year for the non-identified use, since such use does not fall within the scope of REACH.

Every identified use of a substance must comply with the control measures which have been drawn up for that use under REACH; it is possible that these control measures go further than the control measures prescribed in the permit.

If the permit regulations are more stringent than the control measures recommended under REACH, the permit will generally not have to be amended. After all, a permit may include requirements to restrict emissions, even where such requirements indirectly result in restrictions in the manufacture and/or use of a substance.

Practical significance

It is necessary to make a distinction between the situation where the competent authority must officially amend the permit and the situation where the permit holder must submit a request for amendment of the (regulations attached to the) permit:

- Under Article 8.22, Paragraph 2 of the Dutch Environmental Management Act, licensing authorities are obliged to amend the permit if, within the industrial institution or establishment, substances which may not be used without restriction under REACH for example (such as substances for which authorisation is mandatory and restricted substances) are allowed in the permit;
- As a result of REACH, permit holders may be required to use substances and installations in another way than previously the case, or other control measures may be necessary, for example. The necessary amendments will determine whether the company requires nothing more than amended or different regulations for this, or whether it might have to make changes to its installation. The latter is the case, for example, if it is necessary to install an additional purification facility or an extra high chimney. In the event that nothing more than a change of regulations is required, the company can request such a change under Article 8.24 of the Dutch Environmental Management Act. In the event a change of the industrial installation or its operation also takes place, a permit to carry out alterations will also be required. Should the permit situation become confused in the event a permit to carry out alterations is issued, the competent authority may request the company to apply for a revision permit instead.

It is important to note that while REACH can result in many revisions of permits in the long term, the fact that implementation will be phased means that such revisions will be spread over a longer period; there will therefore not be any peak in activities as a result of REACH.

3.2.6 Relationship of REACH to other legislation

Relationship of REACH to the Government Information (Public Access) Act (WOB)

REACH has no impact on requests made under the Government Information (Public Access) Act (WOB) with respect to permit procedures. If REACH information is requested from a permit applicant by the licensing authority when processing a permit application, the Government Information (Public Access) Act (WOB) will continue to be applicable and the information which is deemed confidential under REACH may also be requested. With regard to information which the central government (i.e. competent authority in respect of REACH, meaning the Ministry of Housing, Spatial Planning and the Environment (VROM) or the Dutch National Institute of Public Health and Environmental Protection (RIVM)) holds under REACH, the disclosure, or right of public access, regulation of REACH will apply and requests will be handled by the Agency.

Relationship between REACH and the new 8.40 General Order in Council (amvb)

On 29 June 2006, the draft decree on general rules for establishments and their environmental management (*ontwerp-besluit algemene regels voor inrichtingen milieubeheer*) was pre-published in the Dutch Government Gazette (*Staatscourant*). This also generally includes rules

with regard to discharges into surface water from those establishments. The following text is based on the draft wording of the General Order in Council.

With the arrival of the new 8.40 General Order in Council for non-agricultural holdings, which is expected to enter into force in 2007, many more companies than previously the case (it is estimated it concerns an additional 20,000 companies) will fall under the scope of the 8.40 General Order in Council and will no longer require a permit under the Dutch Environmental Management Act and/or the Pollution of Surface Waters Act. Furthermore, some of these companies (the so-called type A establishments) will no longer be required to give notification in the event of establishment or change of their operations under the new General Order in Council. This means that for many more companies the regulations under the General Order in Council will be decisive in determining whether they can actually use the additional information which becomes available due to REACH.

In the new 8.40 General Order in Council, the establishment (type B and C) must, when giving notification, also provide details of their name and address, the time when the establishment is operational or the change takes effect, the nature and scope of the activities and processes which take place within the establishment as well as a plan of the establishment. In certain situations, which are specifically described, the results of an acoustic survey or additional data with respect to the discharge must be supplied at the time of the notification.

Additionally, the General Order in Council will probably include a general disclosure requirement. This means that the competent authority may require the company to supply the additional information on substances which becomes available as a result of REACH. This also means that, in the case of companies subject to the General Order in Council which use substances that are restricted, for example, or which are on the candidate list of substances requiring mandatory authorisation, the use of such substances may be (or may become) known to the competent authority.

Additionally, under the new General Order in Council, the competent authority has the specific and concrete possibility with respect to a number of activities to prescribe tailored regulations per activity with the intent of reducing emissions into the air. This possibility is included in the General Order in Council because the General Order in Council will also include within its scope companies which emit substances that are very hazardous to human health and/or the environment and for which it is not possible in all cases to include standard regulations in the General Order in Council. The competent authority may use the general duty of care as a safety net provision in the case of activities which are not specifically mentioned. There is no provision in the new General Order in Council to set environmental quality requirements.

Therefore, if it is evident from REACH information that additional requirements ought to be formulated with regard to certain substances which are emitted by a company that falls within the scope of the General Order in Council, the competent authority can use the safety net provision for this purpose.

In summary, it would appear that REACH will have similar consequences for the implementation of this new 8.40 General Order in Council as for the issuing of permits. It will not be possible to firmly determine these consequences until the text of the General Order in Council has been published in the Bulletin of Acts and Decrees (*Staatsblad*).

4 Consequences – a timescale

The various parts of REACH will become effective in phases. This chapter sets out when the various parts of REACH will enter into force and how the practical consequences described in the previous sections relate to this timetable. The following timescale is based on the assumption that the REACH regulation will come into force on 1 June 2007. If the REACH regulation enters into force on a different date, the timescale will shift accordingly.

| In force | Relevant when? | Part of REACH |
|---------------------|--|---|
| Present to 1-6-2008 | To 1-6-2008 | Current WMS regulations, with exception of SDS order, will remain in force |
| Present to 1-6-2009 | To 1-6-2009 | Prohibitory provisions in WMS remain in force |
| 1-6-2007 | After 1-6-2007 | Information in the supply chain for existing and new substances (C&L and SDS obligation immediately; CSR obligation and annexes as soon as a substance is registered, even if registration has taken place before a deadline) |
| 1-6-2009 | After 1-6-2009 | Restrictions (as before; succeeds prohibitory provisions in WMS) |
| 1-6-2008 | to 1-6-2008 based on WMS; from 1-6-2008 based on REACH | Availability of data on basis of the Notification or Registration of new substances |
| 1-6-2008 | After 1-6-2008 | Specific EU regulations on basis of Authorisation (only for authorised substances) |
| 1-6-2008 | After 1-12-2008 | Availability of Pre-registration of substances, except in individual cases of deferral for downstream users up to half a year before the respective registration date to allow for pre-registration of a substance |
| 1-6-2008 | After 1-12-2010 | Availability of Inventory of classification and labelling of all classified substances |
| 1-12-2008 | After 1-12-2008 | Availability of data on “new substances” based on the Registration of existing substances for which no pre-registration has taken place (from 1-12-2008 onwards (end of pre-registration) these will be considered as new substances, except in individual cases deferral for downstream users up to half a year before the respective registration date in order to allow for pre-registration of a substance) |
| 1-6-2008 | After 1-12-2010 | Availability of data on “existing substances” based on the Registration of existing PBT and CMR substances and substances in quantities > 1000 tonnes for which pre-registration has taken place |
| 1-6-2008 | After 1-6-2013 | Availability of data on “existing substances” based on the Registration of existing substances in quantities of 100-1000 tonnes for which pre-registration has taken place |
| 1-6-2008 | After 1-6-2018 | Availability of data on “existing substances” based |

| | | |
|----------|---|--|
| | | on the Registration of substances in quantities of 1-100 tonnes for which pre-registration has taken place |
| 1-6-2008 | After 1-6-2008 But 6 or 12 months after receipt of reg. no. (art. 136) | Availability of data held by downstream users via C&L and via SDS (including obligation to comply with measures prescribed in SDS) |
| 1-6-2008 | After 1-6-2008 | Agency established and operational (may be consulted) |

This results in the following timescale for the consequences summarised in chapter 3 (see table below):

| Description of consequence | Consequence - timescale |
|--|--|
| 1. The permit applicant must use the information relevant to the permit application on chemicals which it must be able to produce under the REACH obligations for its permit application. The licensing authority may exclude an application for a (revision) permit from further consideration if it believes that the applicant has supplied it with insufficient data on hazardous properties or aspects, risks and measures. | The deadline for registering a substance under REACH depends on the type of substance (see previous table). The REACH information on a substance will not be available with certainty until the substance is registered. |
| 2. A licensing authority may not act contrary to the REACH obligations (and other international obligations (such as KRW, OSPAR, POP treaties, etc.)) when issuing permits. | The various REACH obligations enter into force on various dates. See previous table. |
| 3. A licensing authority may specify additional requirements when issuing a permit. These may be requirements arising from IPPC or the KRW, for example, as well as requirements due to local non-compliance with environmental quality standards. | This consequence is not time-dependent. |
| 4. The licensing authority uses the REACH information supplied by the permit applicant when drafting the permit. | The deadline for registering a substance under REACH depends on the type of substance (see previous table). The REACH information on a substance will not be available with certainty until the substance is registered. |
| 5. Due to the fact that the REACH regulation is directly applicable, it is possible that the current permit contains regulations which are not consistent with REACH regulations and/or new insights into the environmental impact of particular substances of which the applicant can be aware under the REACH obligations. | The various REACH obligations enter into force on various dates. See previous table. |
| 6. It must be clear to provinces, municipalities and water boards how REACH relates to other legislation which they are responsible for implementing, such as the 8.40 orders in council and the WOB. | The various REACH obligations enter into force on various dates. See previous table. The deadline for registering a substance under REACH depends on the type of substance (see previous table). The REACH |

| | |
|--|--|
| | information on a substance will not be available with certainty until the substance is registered. |
|--|--|

5 Conclusions and recommendations

This section briefly sums up the preliminary conclusions and recommendations for further action on the basis of the description in section 3. The actions are divided into actions which will be implemented within the framework of this project and actions which fall outside the scope of this project.

Conclusions for licensing authorities operating under the Dutch Environmental Management Act and the Pollution of Surface Waters Act

Based on the six different situations that have been identified, an inventory has been made of the following points of attention for licensing authorities operating under the Dutch Environmental Management Act and the Pollution of Surface Waters Act. Licensing authorities responsible for issuing licences and permits under the Dutch Environmental Management Act and the Pollution of Surface Waters Act:

1. Must clearly state during the preliminary consultations prior to a permit application being made which information on substances (hazardous properties, risks, risk reduction measures) they expect the company to provide. The permit applicant must use the relevant information on chemicals, which it must be able to produce under the REACH obligations, for its permit application;
2. May expect companies affected by REACH to include more information in their permit application; additionally, licensing authorities issuing permits and applications under the Pollution of Surface Waters Act may expect companies to take this information into account when implementing the general assessment methodology in respect to water (*ABM-methodiek*);
3. May request relevant additional information from a company at any time, even if such information must be deemed confidential under REACH;
4. Must exclude a permit application from further consideration if they believe, even after issuing a request for additional information, that a permit applicant is supplying insufficient information about hazardous properties, risks and measures. Insufficient information means, in any event, where a company fails to supply all relevant information for a permit application which it should and must have available under REACH;
5. Are not obliged to verify whether companies are complying with their obligations under REACH, but may have the quantity and quality of the data supplied checked if they suspect that the data are incorrect;
6. May include more stringent or far-reaching requirements in the permit than is obligatory under REACH if other international obligations or the local situation makes it necessary;
7. Must set out in the preamble to the permit that certain specific substances which the company manufactures, uses or emits may be subject to authorisation or restriction under REACH;
8. Must urge the company to request a change of the provisions under Article 8.24 of the Dutch Environmental Management Act if the regulations attached to the permit are contrary to the necessary measures which the applicant must implement under the REACH obligations;
9. Must regularly assess whether permits which have previously been granted are still consistent with REACH and other instruments (such as Integrated Prevention Pollution Control (*IPPC*), *KRW* the Water Framework Directive (*KRW*), etc.) and evaluate whether they may prioritise permit revisions for certain companies.

Actions which have already been formulated and which are implemented within this project

Based on the six different situations that have been identified, the following recommendations for further action have been determined. These actions are implemented within the project “consequences of REACH for the issuing of permits and licences under the provisions of the Dutch Environmental Management Act and the Pollution of Surface Waters Act:

1. A checklist will be made for licensing authorities in order to make it clear to companies which REACH information from the complete overview they may expect a company to supply when submitting an application for a permit, to the extent such information is relevant to the permit application;
2. A proposal will be drafted for general wording to be included in the preamble to the effect that certain substances manufactured, used or emitted by the company may be subject to authorisation or restriction under REACH;
3. An updated version of the circular of 7 October 2003 dealing with the necessary data on chemicals, which are needed to allow careful and proper decision making with respect to applications for permits or licences under the Dutch Environmental Management Act or the Pollution of Surface Waters Act must be issued.

Additionally, information material for licensing authorities setting out the consequences of REACH is being developed within the framework of the project. This memorandum forms the basis for such information material.

Possible actions which are not implemented within the framework of this project

Implementation of the following actions does not fall within the scope of the project “consequences of REACH for licensing authorities issuing permits and licences under the Dutch Environmental Management Act and the Pollution of Surface Waters Act”. The project group would nonetheless like to see these actions implemented.

1. The relationship between REACH and other international instruments which have consequences for the issuing of licences and permits under the Dutch Environmental Management Act and the Pollution of Surface Waters Act (such as KRW and IPPC) must be examined;
2. The consequences of REACH for the content of the new 8.40 General Order in Council must be analysed further;
3. The NeR (Netherlands Emission Guidelines for Air) advisory group has decided to incorporate the direct consequences of REACH for the issuing of permits, as described in sections 3, 4 and 5 of this memorandum, in the NeR. The NeR advisory group has not yet decided on the manner in which this will take place. Additionally, there should be discussion within the NeR advisory group on the indirect consequences of REACH for the NeR. This discussion should include consideration of how to treat substances appearing on the candidate list of substances for which authorisation is mandatory, authorised substances and restricted substances;
4. A further question is whether, and if so, how REACH information on other substances should be taken into account when issuing permits under the Dutch Environmental Management Act and whether guidelines should be drawn up in this regard within the framework of the NeR. The project group would like to see an ABM-type approach be developed for the issuing of permits under the Dutch Environmental Management Act. No such discussion is necessary for the issuing of licences and permits under the Pollution of Surface Waters Act since the information on the hazardous properties, risk and measures (which result in a substance being placed on the candidate list for substances requiring mandatory authorisation, being actually authorised or in a substance becoming subject to a restriction) is already taken into account in the general assessment methodology in respect of water (*ABM-systematiek*). Nevertheless, in the event the general assessment methodology in respect of water is adjusted to comply with

the Framework Water Directive, for example, the desired changes in this methodology arising from the REACH regulation should be made immediately;

5. In the event the GHS is implemented, it will be necessary to examine what consequences this has for the general assessment methodology in respect of water (*ABM-systematiek*) for the purpose of issuing licences and permits under the Pollution of Surface Waters Act and what consequences this has for the ADR classification for the PGS15 guideline, which is used for the storage of substances within the framework of the issuing of permits under the Dutch Environmental Management Act;
6. The relationships between the Dutch national list of priority substances and the General Order in Council listing blacklisted chemicals on the one hand, and the substances lists under REACH on the other (candidate list of substances requiring mandatory authorisation, list of substances for which authorisation is mandatory and list of substances which are subject to restrictions) should be clearly identified in due course and, if relevant, be communicated to the licensing authorities;
7. Once the licensing authorities responsible for issuing licences and permits under the Dutch Environmental Management Act and the Pollution of Surface Waters Act have become familiar with the consequences of REACH for the issuing of licences and permits, an evaluation of the consequences as set out in this memorandum should be carried out.

Annex 1 Abbreviations

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| ABM | General Assessment Methodology in respect of water (<i>Algemene beoordelingsmethodiek water</i>) |
| ADR | Accord Européen relatif au transport international des marchandises dangereuses par route). |
| Amvb | General Order in Council (<i>algemene maatregel van bestuur</i>) |
| BAT | Best Available Techniques |
| CIW | Committee on Integrated Water Management (<i>Commissie Integraal Waterbeheer</i>) |
| CMR | Carcinogenic, Mutagenic and Reprotoxic |
| CSR | Chemical Safety Report |
| GHS | Global Harmonised System |
| IPPC | Integrated Prevention Pollution Control |
| KRW | Water Framework Directive (<i>Kaderrichtlijn Water</i>) |
| LBOW | National Water Consultative Committee (<i>Landelijk Bestuurlijk Overleg Water</i>) |
| NAW | Name and address |
| NeR | Netherlands Emission Guidelines for Air (<i>Nederlandse Emissierichtlijn Lucht</i>) |
| OSPAR | Oslo Paris Convention |
| PBT | Persistent, bioaccumulative and toxic |
| PGS | Publication series for Hazardous Substances (<i>Publicatiereeks Gevaarlijke Stoffen</i>) |
| POP | Persistent Organic Pollutants |
| REACH | Registration, Evaluation and Authorisation of Chemicals |
| RIVM | Dutch National Institute of Public Health and Environmental Protection (<i>Rijksinstituut voor Volksgezondheid en Milieuhygiëne</i>) |
| VIB | Safety data sheet (SDS) |
| VN | UN (United Nations) |
| VROM | (Ministry of) Housing, Spatial Planning and the Environment |
| VWA | Food and Consumer Product Safety Authority (<i>Voedsel- en Warenautoriteit</i>) |
| Wm | Dutch Environmental Management Act (<i>Wet milieubeheer - Wm</i>) |
| WMS | Chemicals Act (<i>Wet Milieugevaarlijke Stoffen</i>) |
| WOB | Government Information (Public Access) Act (<i>Wet Openbaarheid Bestuur</i>) |
| Wvo | Pollution of Surface Waters Act (<i>Wet verontreiniging oppervlaktewateren - Wvo</i>) |