

**Submissions from the Public Consultation on
The draft COMAH regulations transposing Directive 2012/18/EC ('Seveso III')
February 6th – March 9th, 2015
(6 Submissions received)**

Submission 1

Document Submitted by	Colette O'Callaghan, Inter-Agency Emergency Planning Officer
Organisation	Inter-Agency Emergency Management Office
Email	colette.ocallaghan@hse.ie
Reference Number	COMDftregs_pub_1
Submission Date	03 March 2015
Document reviewed by Pat Conneely	

For publication - do not



**INTER-AGENCY EMERGENCY MANAGEMENT OFFICE,
FLOOR 1, EYE, EAR & THROAT HOSPITAL, WESTERN ROAD, CORK.**

Tel: +353 21 - 49 21690 / 49 21621; Fax: +353 21 - 49 21627; Email: emo@hse.ie

The Inter-Agency Emergency Management Office is an initiative supported by An Garda Síochána, the Health Service Executive South, Cork County Council, Cork City Council and Kerry County Council

Submission from the South Emergency Management Region to the Health and Safety Authority in respect of the public consultation on the draft Chemicals Act (Control of Major Accident Hazards involving Dangerous Substances) Regulations 2015

Submission 1 (JK):

- 15 (2) The operator of an upper-tier establishment shall supply the necessary information to a local competent authority to enable the latter to draw up an external emergency plan within the following timeframes -----
- 15 (3) A local competent authority shall provide such information from the external emergency plan to the operator concerned to enable the latter to draw up an internal emergency plan.

In respect of the above, which comes first: the chicken or the egg? Does this now mean that an EEP may / would have to be completed prior to an IEP?

- 15 (7) An external emergency plan shall be prepared by the relevant local competent authority, using such information as is available to it, within six months following the date for the receipt of the necessary information from the operator pursuant to paragraph 2;

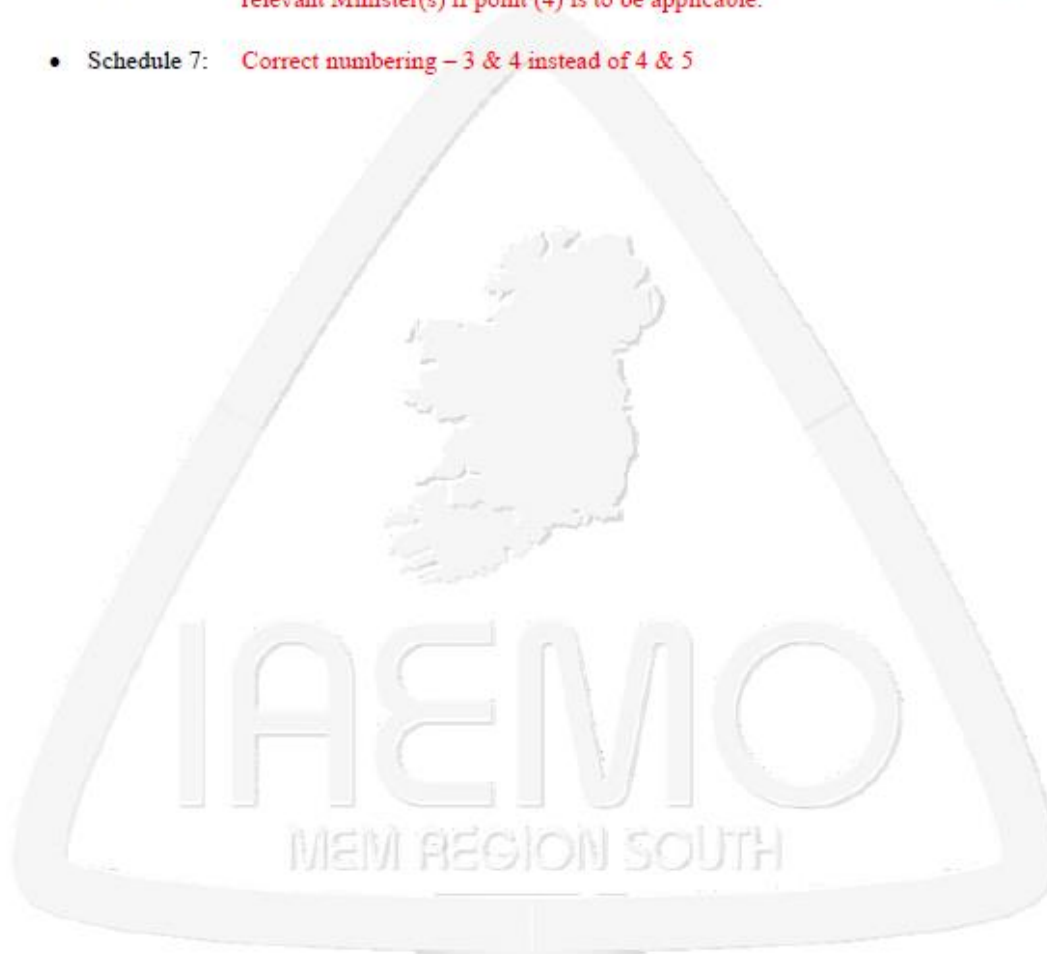
Could this be interpreted to mean that if the operator fails to supply the "necessary information", that the relevant local competent authority must still prepare an EEP within six months?

- 26 (2) A fee charged by a competent authority to which paragraph (1) refers shall be made only in accordance with such scale of fees as is approved by the Minister and the Minister for Finance, and in consultation with any other relevant Minister, pursuant to section 10 of the Chemicals Act 2008 and 2010, which scale of charges may include particulars of the person by whom the fee is payable.

The scale of fees will need to be appropriate and realistic.

Submission 2 (CO'C):

- Regulation 2: Internal Emergency Plan.....in accordance with Regulation 14 - not 15.
Local Competent Authority.....in accordance with Regulation 4 - not 5(2)
- Regulation 15:(10) (b): Correct references - Regulations 17(1)(a) and (2)(a) do not exist
- Regulation 26: The scale of fees needs to be approved and signed off on a formal basis by the relevant Minister(s) if point (4) is to be applicable.
- Schedule 7: Correct numbering – 3 & 4 instead of 4 & 5



Decision/Result of review

The submission has been noted.

Regulation 16(2) which requires the operator to provide information to the Competent Authority (CA) to enable it to draw up the EEP within 6 months of application (was 15(2)) remains unchanged. Regulation 16(3) now requires the CA to supply, on request, such relevant information in relation to the external emergency as may be necessary for the operator to draw up the internal emergency plan. Regulation 16(5) requires the CA to consult with and have regard to any observations from the operator of the establishment to which the plan relates.

The CA, under Regulation 16(8) is required to prepare the emergency plan within 6 months of the date by which the operator must supply information to the CA under Regulation 16(2), but now also makes it clear that in any case it must be prepared within one year of the date that the CA has been notified by the Central Competent Authority (CCA) of its obligation.

As Regulation 16(2) places a duty on the operator and failure to comply will be an offence. EEPs and IEPs are prepared in tandem and information must be shared to enable each plan to reflect the other. The CCA are satisfied that the published Regulations reflect this in a practical manner.

Charges for services are addressed in Regulation 27, in particular for local competent authorities in paragraph (2) of that Regulation. It will be for the Minister and the appropriate Minister to decide on the scale of fees that will apply.

The remaining comments on numbering and references have been noted and addressed in the final regulations as necessary

For publication - do not copy

Submission 2

Document Submitted by	Denis Curtin
Organisation	Engineers Ireland (Chemical & Process Engineering Division)
Email	dc@deniscurtin.eu
Reference Number	COMDftregs_pub_2
Submission Date	06 March 2015
Document reviewed by Pat Conneely	

For publication - do not copy



Chemical & Process Engineering Division

**Comments on Draft Regs of 05/02/2015 for public consultation
S. I. No. XX/2015- CHEMICALS ACT (CONTROL OF MAJOR ACCIDENT
HAZARDS INVOLVING DANGEROUS SUBSTANCES) REGULATIONS 2015**

The following are the comments made by the Chemical and Process Engineering Division of Engineers Ireland.

6th March 2015

Regulation 9: Definition of 'establishment'

"establishment" means the whole location under the control of an operator where dangerous substances are present in one or more installations, including common or related infrastructures or activities, and an establishment may be either —

- (a) an upper-tier establishment; or
- (b) a lower-tier establishment;

Comment: Are 'related infrastructures' that are shared with a 3rd party and owned by a 3rd party subject to this definition?

For example a jetty operation that is used by a number of parties including the 'operator'. The jetty infrastructure not owned by the 'operator'.

Regulation 9: Definition of 'significant change'

"significant change" means any significant increase or decrease in the quantity, or a significant change in the nature or physical form, of a dangerous substance present at an establishment, as indicated in the notification provided pursuant to Regulation 8, or any significant change in the processes employing the dangerous substances or any modification of an establishment or an installation which could have significant consequences in terms of major accident hazards, including a change in tier status;

Comment: What is a 'significant' increase?

A significant change should be quantified within the definition to make it clear to operators when this provision applies.

Application

Application.

3. (1) These Regulations lay down rules for the prevention of major accidents involving dangerous substances, and the limitation of their consequences for human health and the environment.

(c) the transport of dangerous substances and directly related intermediate temporary storage by road, rail, inland waterways, sea or air outside establishments defined in Regulation 2(1), including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards;

(d) the transport of dangerous substances in pipelines, including pumping stations, outside establishments defined in Regulation 2(1);

(e) the exploitation, namely the exploration, extraction and processing, of minerals in mines and quarries, including by means of boreholes;

Comment: Are jetties included within the definition of what is exempt from the regulations?

Is this consistent with the definition of establishment (common or related infrastructures or activities). Similarly under the definition of 'installation'?

Chemical and Process Engineering Division, Engineers Ireland
Page 3 of 7

Notification

(6) The Central Competent Authority shall review all proposed modifications covered by regulation 8(5) and shall inform the operator without delay if the proposed modification is considered to be significant and which therefore should

(a) not proceed until it can be demonstrated to the satisfaction of the Central Competent Authority that it does not significantly increase the risk to human health or the environment, or

(b) go through the formal planning process, covered by the Planning & Development Acts 2000 to 2010, for permission,

which decision shall be at the discretion of the Central Competent Authority.

Comment: This provision seems to indicate that a 'significant change' may be subject to the Planning and Development Acts 2000 to 2010 at the direction of the HSA.

If this is a correct interpretation, then as commented on earlier, the definition of a significant change should be quantified.

Comment: Can a significant change i.e. which introduces the storage of a new dangerous substance (without infrastructure changes) in substantial quantities be subject to planning at the direction of the HSA?

Is this compatible with Planning Legislation?

This should be made clear.

Major Accident Prevention Policy

10. (1) Every operator shall draw up a document in writing setting out the major accident prevention policy (in these Regulations referred to as the MAPP) for its establishment and shall submit this MAPP to the Central Competent Authority.

Comment: Typically the MAPP is a one page statement of policy signed by the Managing Director of the company, and implemented via a safety management system and other supporting documents and studies.

Chemical and Process Engineering Division, Engineers Ireland
Page 4 of 7

Is it the intention that the MAPP policy is submitted along with the safety management system and all supporting documents?

This should be made clear.

(7) An operator shall, subject to paragraph (8), ensure that the policy set out in its MAPP is implemented by appropriate means, structures and by a safety management system, in accordance with Schedule 2, proportionate to the major accident hazards, and the complexity of the organisation or the activities of the establishment.

Comment: Guidance on what is proportionate and how it is defined should be outlined to make the interpretation of this provision clear.

MAPP Safety Management System Schedule 2 (vi) monitoring performance

(7) An operator shall, subject to paragraph (8), ensure that the policy set out in its MAPP is implemented by appropriate means, structures and by a safety management system, in accordance with Schedule 2, proportionate to the major accident hazards, and the complexity of the organisation or the activities of the establishment.

(8) An operator of a lower-tier establishment may implement its MAPP by means other than by way of a safety management systems, provided the means chosen are appropriate and proportionate to the major accident hazards and take into account the principles set of in Schedule 2.

(vi) monitoring performance — adoption and implementation of procedures for the ongoing assessment of compliance with the objectives set by the operator's MAPP and safety management system, and the mechanisms for investigation and taking corrective action in case of non-compliance. The procedures shall cover the operator's system for reporting major accidents or 'near misses', particularly those involving failure of protective measures, and their investigation and follow-up on the basis of lessons learnt. The procedure could also include performance indicators such as safety performance indicators (SPIs) and/or other relevant indicators.

Comment:

The use of 'could' in schedule 2 (vi) would appear to be not appropriate for use in the regulations. The text of item (vi) is verbatim from the directive but needs clarification. Please clarify if it is a requirement to report SPIs or not? SPIs are key leading indicators of the operational and performance of the safety management system/s employed; and for audit and reviews as per schedule 2 item(vii), establishing the robustness of the safety management system and the risk profile of the operations.

Internal Emergency Plans

(2) The operator shall draw up the internal emergency plan pursuant to paragraph (1) in consultation with the personnel working inside the establishment, including long-term subcontracted personnel, relevant local competent authorities in whose functional area the establishment is situated and such other persons as appear to be appropriate.

Comment: Does this provision apply to lower tier establishments.

This should be made clear.

Comment: Does this provision give the local competent authority the ability to specify what they expect to be included in terms of infrastructure and resources within the internal emergency plan?

Provision of Information to the Public

(5) The operator of an upper-tier establishment shall ensure that all persons likely to be affected by a major accident originating at that establishment receive regularly and in the most appropriate form, without having to request it, clear and intelligible information on the safety measures and requisite behaviour in the event of a major accident

Comment:

What is meant by persons likely to be affected.

The reference to 'specified area' seems to be dropped from the 2006 version of the regulations. Is this correct?

How is the area / persons at risk therefore to be defined?

Inspections and investigations

(7) The Central Competent Authority shall communicate the conclusions of the inspection and all the necessary actions identified to the operator within four months after each inspection and ensure that the operator takes all those necessary actions within a reasonable period after receipt of the communication.

Comment:

Up to four months before communicating conclusions to inspections is too long, 4 - 6 weeks would be reasonable. Will the Central Competent Authority establish the reasonable period for implementing necessary actions in conjunction with the operator?

Other Comments

- Include a definition in Reg 2 for the terminology "all necessary measures", "so far as reasonably practicable" and "best practicable means" used in Reg 7(1), (2c) & (2d) and (2e) or at minimum a cross reference to other legislative Guidance or reference where these terms are more properly defined.
- In Notes to Schedule 1, clarify that "Q" the "relevant qualifying threshold" used in calculations which involves any named substance according to Part 2 supersedes any threshold per Part 1 for where that substance is also classified by Category. Note that the order for Part 1 & 2 in the proposed Regs has swopped around with now the Listed Materials falling into Part 2 vs originally formed Part 1 in 2006 Regs. Verify that there are not other knock on impacts in how the Parts are referenced to ensure they match the intent.
- Schedule 6 Paragraph 1.2(e) Clarify that "evacuations etc.. for more than 2 hrs" of itself is not notifiable unless there is an associated Injury or damage. While this perhaps can be inferred from a read of the first line of paragraph 1.2 it is not explicitly clear as all the other line items show clearly a harm arising.
- Schedule 7 should clarify what is considered to be "serious injury" and "serious damage to the environment". If the intent is that Schedule 6 and 7 should be read in conjunction then clarify that these terms refer to Schedule 6 (1.2) and (1.3). Should Schedule 7 explicitly include "damage to property" as a term subject to Schedule 6(2)

or 6(4) ? Lack of clarity in the definition for Sched 7 CA notifiables / it would be preferable to have a consistent understanding.

- Clarify the transition arrangements for an “existing” facility subject to current 2006 Regs but whose 5 year update falls due after 31 May 2015 but before June 2016. This is particularly relevant for existing establishments due in 3 - 4 Q 2015 who may already have initiated their updating process prior to 31 May 2015. It appears that submissions after 31 May 2015 fall subject to the new Regs with up to June 2016 to file their updates. What is not clear is explicit acknowledgement that the 5 year update requirement is extended by the transition period to June 2016 for any existing establishments i.e. is it acceptable for an existing site to exceed it's 5 year update due.

In such cases a site should not be held out of compliance due to exceeding the 5 year update rule during the transition period.

Decision/Result of review

The submission has been noted.

Definitions

Where possible, definitions from the Directive have been retained in the Regulations. This is the case with the definition of establishment. Furthermore, the application of the Regulations exactly mirrors that of the Directive.

Clarification on the specific points of the status of jetties would be best addressed through guidance and we will be reviewing all guidance once the Regulations are in place.

'Significant change' is no longer in the definitions in Regulation 2(1) and a new Regulation 12 implements Article 11 of the Directive. The term 'significant' still appears in the Regulations as it reflects the language of the Directive. , We consider that any clarification needed on the specific point raised, regarding the term a 'significant increase', is best addressed through guidance.

The new Regulation 12 links with the land-use planning regulation (24) which has undergone a considerable rewrite. Of note, is the fact that significant modifications are now addressed in paragraphs (4) to (8) of Regulation 24, which makes it clear how these aspects of the Directive will be implemented and that the planning authorities will make all the appropriate planning decisions.

MAPP

The MAPP (and only the MAPP) must now be sent by lower-tier operators to the CCA (upper-tier operators already include it in their safety report). The matters that the MAPP must address are clearly set out in Regulation 10 and Schedule 2. It is considered that the issue of the proportionality of the MAPP would be best addressed by guidance.

The comments in relation to 'monitoring performance' in Schedule 2 have been taken on board and the requirement for performance indicators has been strengthened to 'shall'.

Emergency Plan

The requirement for internal emergency plans applies only to upper-tier establishments and this is made clear in the title of Part 4 and in the individual regulations themselves. Regulation 16 requires an interchange between the CA and the operator to enable each to prepare their respective plans and the proper implementation of the Directive requires that they work well in tandem: the CCA will also have an interest in ensuring this, in its coordinating role.

Provision of information to the public

A paragraph (Regulation 25(8)) has been added to make it clear that the CCA will advise the operators of the relevant area containing the persons likely to be affected. This is another topic that we consider is better addressed through guidance.

Inspection conclusions

The four month period is specified in the Directive but in practice should be much shorter. Regarding the implementation of the necessary measures, the timeframe will firstly depend on the risk and then on what is practicable to achieve and the operator will certainly have an input there.

Other comments

Terms which are used in the Directive but not defined (all necessary measures, contents of Schedule 6 etc.) have not been defined or elaborated further on in the Regulations as we consider they are best be addressed in guidance.

Regulation 2(4) has been added to make it clear that all the provisions of Schedule 1 apply.

Schedule 1 faithfully reflects Annex I of the Directive.

Schedule 7 has been revised to make it simpler and more consistent with Schedule 6.

Transitional arrangements have been added in relation to notification, MAPP, safety report, emergency plan testing and information to the public.

For publication - do not copy

Submission 3

Document Submitted by	Roger Casey
Organisation	Cantwell Keogh & Associates
Email	roger@cantwellkeogh.com
Reference Number	COMDftregs_pub_3
Submission Date	09 March 2015
Document reviewed by Pat Conneely	

Comments on Draft Seveso III Regulations

My big interest was the format of the information to neighbours. I think the approach taken is reasonable.

Minor comments

1. On the final legislation, I presume there will be a more detailed front index listing each regulation.
2. The definition of risk in Regulation 2 “*the likelihood of a specific effect occurring within a specified period or in specific circumstances*” is not correct and leads to confusion. This poor definition is also in the directive. The definition of risk should involve a combination of likelihood and consequences.
3. In regulation 8 (Notification) paragraph (5) makes reference to “Regulation 4(a) or 4(b)”. Should this be paragraph 4(a) or 4(b) i.e. 8(4)(a) or 8(4)(b)

Roger Casey
Cantwell Keogh & Associates
9.3.15

Decision/Result of review

The submission has been noted.

Point (1) - an expanded arrangement of sections has been included with a list of the schedules in the finalised Regulations.

Point (2) - we note the concern, however, as the definition has come from the Directive, this has remained in the final Regulations. Further clarity may be possible to address in guidance.

Point (3)- Regulation (8) has been rewritten and a new Regulation 12 has been introduced.

Submission 4

Document Submitted by	Fergal Callaghan
Organisation	AWN Consulting
Email	Fergal.Callaghan@awnconsulting.com
Reference Number	COMDftregs_pub_4
Submission Date	09 March 2015
Document reviewed by Pat Conneely	

SUBMISSION

To:	H&SA	From:	AWN
Company:	AWN	Date:	09 March 2015

Subject: SUBMISSION ON S.I. No. XX/2015- CHEMICALS ACT (CONTROL OF MAJOR ACCIDENTHAZARDS INVOLVING DANGEROUS SUBSTANCES) REGULATIONS 2015

General

We submit that it is critical to the protection of the intellectual property and trade secrets of companies that provision should be made in the Regulations to allow storage of confidential information to remain on the Operators site and within the Operators control, and to be made available to the CCA when accompanied by the Operator, in an agreed way that remains within the management of confidentiality rules applied by the Operator. It cannot be by electronic file submission or hard copy file submission as the confidentiality of these means can never be guaranteed to be secured.

The wording of Regulation 25 is unacceptable and does not address the huge concerns of operators about the dissemination of their confidential information. The exclusions as set out in Regulation 34(2) of the COMAH Regulations 2006 need to be inserted here, and the confirmation that no such information will be disclosed without the consent of the person by or on behalf of whom it was originally furnished needs to be inserted also. Paragraph 4 is too vague and does not lend any real protection to operators. This proposed wording is much weaker and offers less protections to operators than that provided for by articles 14 and 22 of the Seveso III Directive.

We note and welcome that “consultation distance” is not linked to the “boundary” around an establishment.

Regulation 7

We request that “all necessary measures” be defined in the Regulations.

We request that “best practicable means” be defined.

Regulation 8

“A reasonable period of time “ should be defined (Regulation 8 (2))

We note that the “Specified Area” term and definition has been removed from the Regulations and request that this be re-introduced.

Rather than “any modifications to the inventory of dangerous substances” we request this be changed to “any modifications to the inventory of dangerous substances that have significant implications for major accident hazards” (Regulation 8).

“Significant change” needs to be defined in the Regulations, we contend it should be a change which would lead to an increase in the Specified Area and that all other changes should be deemed not significant.

We submit that definition and guidelines on “significant consequences for major-accident hazards” are required.

Regulation 8(1)(g)(i) and (ii)

The operator may not have this information to hand and may not be able to obtain this information, we submit the CCA should be required to request this information.

Regulation 8(2) – 3 months prior notice is excessive

Regulation 8(5)

We submit 8(5) should be changed to “ make a modification which would have significant implications for Major Accident Hazards, which is defined as if it would lead to an increase in the Specified Area”

One month should be reduced to 2 weeks.

The H&SA must define a process for an establishment to make changes, we submit the Authority should respond in 2 weeks to a submission.

How will the H&SA decide that the change is “significant” what are the criteria, these should be included in the Regulations, we submit this should be if it leads to an increase in the specified area only.

“significantly increase the risk” should be defined, we submit this should be if it leads to an increase in the specified area only.

How does the H&SA propose to assess the risk to the Environment? This will involve the EPA, can the H&SA advise how this will affect the timeline for the H&SA to respond.

Regulation 8(5)(i) – we submit the obligations are very onerous if they have to be done in advance and before finding out from CCA whether proposed modifications can proceed or not.

Regulation 8(6) – we submit that the power given to the CCA to prevent a proposed modification from proceeding until it can be demonstrated that it does not significantly increase the risk to human health or the environment or direct that it must go through the formal planning process is excessive, is not required under Seveso III Directive and is unacceptable for operators.

The CCA should not be given this power at all as it is not mandated by Seveso III and will be a considerable burden for operators in Ireland. Furthermore there is no clarity about the process, i.e. what is meant by “significant” here, how does the CCA decide whether option (a) or (b) applies, what will be involved in the planning process.

Does regulation 8(6)(a) mean that there can be no modification which causes an increase in risk to human health or the environment (despite any safety measures and mitigations being put in place)?

Regulation 9(2)(a) – what “suitable information” will be required to be provided, this should be set out

Regulation 11(2) – if all of the data set out in Schedule 3 is to be included in the safety report, including chemical names, CAS numbers etc, how will this information be kept confidential by the CCA in light of operator’s need to keep trade secrets and other information as confidential? As it stands the legislation does not address this issue which is a very significant one for operators. We submit that this legislation should be amended to enable such information to be retained at the Operators site and made available for viewing by the CCA.

We also submit that the Operator should be permitted to submit hazardous substances aggregated into Groups, for example if an Operator has dozens or indeed hundreds of individual flammable substances, rather than submit the individual CAS number and chemical name of each one, the Operator should be permitted to group the substances under the heading “flammable” and submit a representative CAS number and chemical name.

Regulation 11(3)

We submit that “change in inventory” should be changed to “change in inventory which would lead to an increase in the specified area” – as it is written it implies that any change in the inventory of dangerous substances requires a revised safety report.

Regulation 11(6) – one month deadline is too onerous and impractical if many queries are raised

Regulation 11(7) – is this intended to be applicable only to “new establishments” as defined? If not, what changes to the inventory are envisaged here?

Regulation 11(7) is a significant barrier to changes and developments on COMAH sites, the H&SA must set a time limit of 2 months, we submit, to respond once the Safety Report has been submitted.

Regulation 17 (1) “electronic means” must be defined and the means by which it is delivered must be defined. For example does this mean a website? Will it be on the H&SA website? On the Company website?

Regulation 17 – it is preferable if the information to the public is provided directly by the operators rather than by the CCA

Regulation 17(5) – definition or guidelines re phrase “likely to be affected by a major accident” is required

Regulation 17(6) schools, hospitals – within what area? We submit it should be the specified area.

Regulation 21 - “seriously deficient” should be defined.

Regulation 21(8) – we request that the operator is also notified by the CCA if the LCA is not required to prepare an EEP.

Regulation 21 (9) – we submit that if the specified area does not extend outside the site boundary, an EEP should not be required. We submit that the EPA should respond within 2 weeks not 1 month.

Regulation 23 (1) the Regulation must define how the H&SA should protect areas of particular sensitivity. We propose that Regulation 23 (3) (c) be modified from “so as not to increase the risks” to “so as not to increase the specified area”.

Regulation 23 – timelines set out in corresponding regulation 27 of the COMAH Regulations 2006 have been omitted here but should be included

Regulation 23(2) – will confidential information regarding a specific operator be shared with the planning authority?

Regulation 25 (1) – there needs to be a clear statement as to how trade secret information will be protected and excluded from release to the public.

Regulation 25 – the wording of this regulation is unacceptable and does not address the huge concerns of operators about the dissemination of their confidential information. The exclusions as set out in Regulation 34(2) of the COMAH Regulations 2006 need to be inserted here, and the confirmation that no such information will be disclosed without the consent of the person by or on behalf of whom it was originally furnished needs to be inserted also. Paragraph 4 is too vague and does not lend any real protection to operators. This proposed wording is much weaker and offers less protections to operators than that provided for by articles 14 and 22 of the Seveso III Directive.

Schedule 1 – guidelines as to interpretation of CLP is to be applied, is required

OTHER POINTS OF NOTE IN OUR SUBMISSION

Notification

In relation to the notification (required by Article 7 of the Seveso III Directive), the requirement to provide the Central Competent Authority (CCA) with commercially confidential information on chemical names is a concern for operators. It is submitted that transposition of the Seveso III Directive should provide for operators to provide the CCA with information on chemical hazards, without having to fully identify commercially confidential chemicals.

Information to the public

CCA information portal and screening system for confidential information, the following aspects will need to be clarified:

- Will the operator be required to submit confidential information to the CCA?
- If so, how will the CCA store such confidential information and what security systems will be in place?
- Once confidential information has been submitted to the CCA, who will then decide what is confidential – the CCA or the operator – and what information will be made available to the public?
- If the CCA is the arbiter of what is confidential, what criteria will be used? Will policies and guidelines be produced?

The following points require clarification in the legislation:

- Will the operator be required to provide the CCA with confidential information on chemical names, storage and operating conditions?
- If so, how will this information be stored and what security systems will be used?
- Will confidential information be included in technical land use planning advice submitted to planning authorities by the CCA?
- Will the timescales for provision of technical LUP advice comply with planning legislation timescales?

For publication - do not copy

Decision/Result of review

We note the detailed feedback. For ease of consideration, the observations received have been grouped under a number of headings for comment.

Information provision and confidentiality.

These two matters are now dealt with in Regulations 25 and 26 which have been extensively rewritten to ensure the provisions of the Directive, and in particular Articles 14 and 22, are applied correctly. Information that is to be supplied to the CCA as specified in the Directive must be supplied even where it is claimed to be confidential.

The grounds for the exclusion of information from the requirements of Regulation 26(1) are determined by the Access to Information on the Environment Regulations which implement Directive 2003/4/EC.

For practical reasons (the level of security to be applied to documents in the possession of the CCA under these Regulations for example) potentially confidential information has to be identified when it is submitted to the Authority (see Regulation 26(3) for the safety report). Where this is not explicitly addressed in the Regulations, e.g. in relation to notification under Regulation (8), it will be made clear in the electronic notification form provided by the CCA to the operators and/or in guidance.

The Access to Information on the Environment Regulations applies to all information submitted to a competent authority under the Regulations.

Regulation 26(4) allows for amended versions of the safety report or inventory of dangerous substances to be supplied for the public in specified circumstances.

Information given to 3rd parties such as the EPA or the local competent authorities must be treated by them as confidential and access to them is via the CCA.

The safety report will remain confidential until the CCA gives its conclusions (Regulation 26(8)).

Terms which are used in the Directive but not defined (all necessary measures, best practicable means, significant consequences, significantly increase the risk, change in inventory, electronic means, seriously deficient, likely to be affected by a major accident) have not been defined or elaborated further on in the finalised Regulations as these are best addressed in guidance.

Modifications and land-use planning

Regulations 8 and 24 have been extensively rewritten since the public consultation and a new Regulation 12 has been added.

Significant change is no longer defined in Regulation 2.

Regulation 24 is now clearer a) that planning decisions are to be made by the appropriate planning authority, b) on the basis on which the CCA will provide technical advice to them (Regulation 24(3)) and c) that modifications to establishments will be dealt with by the CCA (Regulation 24(4)) in the circumstances prescribed by the Directive and d) on the circumstances in which modifications will be referred to planning authorities (Regulation

24(5)).

The timelines within which technical LUP advice must be given have been adjusted for internal consistency and for better alignment with the planning and development regulations (Regulation 24(9) and (10)).

Operators must review and revise as necessary their notifications, MAPP/SMS and safety report in advance of a significant modification (Regulation 12(1)) and notify the CCA in advance in sufficient time to allow the CCA to carry out its functions under Regulation 24. Any information given to a planning authority under Regulation 24 will be available to the public.

Information to the public

The permanent electronic provision of the information required by Article 14(1) is a Member State function in the Directive and this has been assigned to the CCA in Regulation 25(3). The information that has to be supplied to the public has been exactly reproduced from the Directive.

Notification

The information required on dangerous substances relates to name and category (Regulation 8(1)(d)), as well as quantity and physical form (Regulation 8(1)(e)). The CAS number is not required under this Regulation: the information provision and confidentiality elements of the Regulations have already been described in the first point above.

Timelines

The practical implementation of the Directive requires that timelines must be specified in certain circumstances, rather than relying on the 'reasonable period of time' etc. references in the Directive.

The 'one month or such longer period as the CCA may specify' in Regulation 11(6) of the draft' is retained as it is considered to be both reasonable and reasonably flexible.

Information to persons likely to be affected

A requirement has been placed on the CCA to inform the operator of the area within which the 'persons likely to be affected' have to be informed (Regulation 25(8)). Further elaboration on how this area will be determined will be included in future guidance from the CCA. The area is not given a name in the Regulations but this will also be addressed by guidance.

Submission 5

Document Submitted by	Gerry Costello
Organisation	Shell E&P Ireland
Email	G.Costello@shell.com
Reference Number	COMDftregs_pub_5
Submission Date	09 March 2015
Document reviewed by Pat Conneely	

For publication - do not copy



Shell E&P Ireland Limited
Corrib House
52 Lower Leeson Street
Dublin 2
Ireland
Tel +353 (0)1 669 4100
Fax +353 (0)1 669 4101

Health and Safety Authority,
Metropolitan Building,
James Joyce Street,
Dublin 1.

Our Ref: COR-01-SH-GM-2109

Date: 09/03/2015

Re: Shell E&P Ireland Limited's submission on the draft COMAH regulations implementing the 'Seveso IIP' Directive

Dear Sir/Madam,

Shell E&P Ireland Limited's (SEPIL's) Bellanaboy Bridge Gas Terminal falls under the current Control of Major Accident Hazards (COMAH) regulations and the Petroleum (Exploration and Extraction) Safety (PEES) Act and there is a complete overlap in terms of major accident hazard regulation by the Health and Safety Authority (HSA) (under the COMAH regulations) and by the Commission for Energy Regulation (CER) (under the PEES Act). SEPIL is currently the main contributor to the significant Petroleum Levies which are associated with the development and implementation of the CER's Petroleum Safety Framework.

Regarding draft regulation 26 (Charges for services), in order to remain competitive, SEPIL strongly advises that the duplication of regulatory remit is removed as soon as possible as it is not reasonable that, for the Bellanaboy Bridge Gas Terminal, SEPIL should incur the CER's and the HSA's services costs – which are both related to major accident hazard regulation. SEPIL would suggest that there is an upper limit to any HSA charges for services and consultation with industry prior to finalising the fees.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Gerry Costello".

Gerry Costello
Regulatory Affairs Manager

Registered in Ireland Number 316588
Registered Office: Corrib House, 52 Lower Leeson Street, Dublin 2, Ireland
Directors: RD Deasy, JG Egan, AM Hamilton

Decision/Result of review

We note your comments; however, we do not consider that there is a complete overlap with the CER. For example, the HSA will investigate accidents at the terminal because the CER does not have this function.

The actual scale of fees are not set out in the Regulations but will be a matter for the Minister and SEPIL's view will be brought to his attention.

For publication - do not copy

Submission 6

Document Submitted by	Michael Gillen
Organisation	IBEC
Email	michael.gillen@ibec.ie
Reference Number	COMDftregs_pub_6
Submission Date	09 March 2015
Document reviewed by Pat Conneely	

Submission on behalf of Pharmaceutical Ireland (PCI) on the transposition of Directive 2012/18/EC ('Seveso III') to the Chemicals Act (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2015

9 March 2015

Pharmaceutical Ireland (PCI) welcomes the opportunity to make a submission on the transposition of this directive. We have already made a more detailed submission on the Draft Regulatory Impact Analysis on the transposition of Directive.

Comments

- Suggest including a definition in Reg 2 for the terminology “all necessary measures”, “so far as reasonably practicable” and “best practicable means” used in Reg 7(1), (2c) & (2d) and (2e) or at minimum a cross reference to other legislative guidance or reference where these terms are more properly defined.
- In Notes to Schedule 1, clarify that “Q” the “relevant qualifying threshold” used in calculations which involves any named substance according to Part 2 supercede any threshold per Part 1 for where that substance is also classified by category.
- In Schedule 6 Paragraph 1.2(e), clarify that “evacuations etc. for more than 2 hrs.” of itself is not notifiable unless there is an associated Injury or damage. While this perhaps can be inferred from a read of the first line of paragraph 1.2 it is not explicitly clear as all the other line items show clearly a harm arising.
- Schedule 7 should clarify what is considered to be “serious injury” and “serious damage to the environment”. If the intent is that Schedule 6 and 7 should be read in conjunction then clarify that these terms refer to Schedule 6 (1.2) and (1.3). Should Schedule 7 explicitly include “damage to property” as a term subject to Schedule 6(2) or 6(4)? It would be preferable to have a consistent understanding.
- Could the HSA clarify the transition arrangements for an “existing” facility subject to current 2006 Regulations where the 5 year update falls due after 31 May 2015 but before June 2016? This is particularly relevant for existing establishments due in Q3 and Q4 2015 who may already have initiated their updating process prior to 31 May 2015. What is not clear is explicit acknowledgement that the 5 year update requirement is extended by the transition period to June 2016 for any existing establishments i.e. is it acceptable for an existing site to exceed their 5 year update due to this grandfathering rule. In such cases a site should not be held out of compliance due to exceeding the 5 year update rule during the transition period.
- On a related point, will documents prepared under Seveso II and submitted to the HSA in the past (and up until 31st May 2015), be considered information relating to the environment and open requests for information?

- Will the operator be informed of a request for information relating to the site being made to the Competent Authority?

For publication - do not copy

Decision/Result of review

The submission has been noted.

Terms which are used in the Directive but not defined (all necessary measures, best practicable means, so far as is reasonably practicable) have not been defined in Regulation 2(1) or elaborated further in the Regulations as we consider these are best addressed in guidance.

Regulation 2(4) has been added to make it clear that all the provisions of Schedule 1 apply.

Schedule 1 faithfully transposes Annex I of the Directive.

Schedule 6 transposes Annex VI exactly. We note the issue raised, but consider that this is something that can be better addressed in guidance.

Schedule 7 has been rewritten and should now be clearer in the criteria to be applied.

Transitional arrangements have now been added to the Regulations in relation to notification, MAPP, safety report, emergency plan testing and information to the public. The safety report update required by the coming into effect of these Regulations is not a five-year update (as made clear by Regulation 11(4)). Five-year updates that fall due between June 1st 2015 and 31 May 2016 should be made by the due date and identified as such since they have a broader review requirement.

Historic safety reports prepared under the previous regulations, that are no longer current, will not be retained beyond the period specified in our records management policy.

Requests for information under Regulation 26(1) will be treated as prescribed under the Access to Information on the Environment Regulations. Our understanding is that consultation with the operator would be required only in relation to information requested that has been claimed to be confidential.

For publication - draft copy