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## SUBMISSION

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

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

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### 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?