



Department
for Business
Innovation & Skills

**FOCUS ON ENFORCEMENT
REGULATORY REVIEWS**

Review of Enforcement in the
Chemicals Industry (COMAH)

FEBRUARY 2013

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Focus on Enforcement (FoE) Review of Enforcement in the Chemicals Industry (COMAH)

SECTION 1: BACKGROUND

Purpose of the Focus on Enforcement reviews

1. This paper summarises the findings of the FoE Review of enforcement in the chemicals industry in relation to COMAH (Control of Major Accident Hazards). FoE reviews examine the impact of regulatory delivery and enforcement in particular sectors of the economy. Each review is a short, sharp investigation of stakeholder experiences and evidence; they are carried out by a small review team and typically involve a six- eight week fieldwork phase.
2. The purpose of this paper is to present the findings and evidence that the review team heard. The aim of the review is not to make specific recommendations for reform but to identify the impact and consequences of current enforcement practice, enabling relevant regulators to be invited to consider and respond.
3. Each review seeks to identify areas of good practice, as well as those elements of the approach to regulatory enforcement that affected companies, and other stakeholders, feel could be improved. Publication of the report, setting out the issues identified, is accompanied by publication of a response and a set of proposed reforms from the lead regulators.

Input to the evidence gathering

4. The review team took evidence through visits and face-to-face discussions and through the Focus on Enforcement website. Input was received from a range of trade bodies, from individual businesses and from the regulators.

Regulatory scope and purpose of the regime

5. The Control of Major Accident Hazards (or COMAH) Regulations cover industrial facilities which pose a major potential hazard to the workforce, to neighbouring communities or to the environment due to the quantities and nature of substances they handle. Typically these are highly toxic, flammable, polluting or explosive materials. The regime covers on-site safety (the workforce) and off-site safety (neighbouring communities).

6. The GB COMAH Regulations sit under the EU wide Seveso Directive. The aim of the regulations is to take all necessary measures to prevent major accidents involving dangerous substances, and to limit the consequences to people and the environment of any major accidents which do occur.

7. Around 950 sites in Great Britain fall under the COMAH regime (12% of all Seveso sites in the EU). Sites qualify due to the nature and quantities of materials that they handle. In some cases the sites manufacture the substances, in some cases they are used as raw materials or part of the manufacturing process, and in some cases they are stored on sites as warehousing, processing and distribution hubs.

8. The history and development of the chemicals sector in the UK (and sometimes subsequent local housing planning decisions) have resulted in many COMAH establishments being located in close proximity to residential populations and in sensitive environmental locations such as estuaries and sites of special scientific interest. The COMAH Regulatory regime reflects this fact and provides public assurance about the safe operation of these establishments.

9. The COMAH regime aims to ensure that risks are properly managed and controlled in a safe and sustainable way, and to provide public reassurance that this is the case. The industries within scope of the regime are essential to our everyday life, but have the potential if things go badly wrong to cause large numbers of deaths or injuries from a single event, as well as potentially harmful and significant long term impacts on the environment.

Sector coverage of the review

10. The COMAH regime covers a diverse range of industrial sectors including: chemical manufacturing and chemical storage sites; oil refining and storage; gas refining and storage; water treatment works; explosives and fireworks manufacturing and storage; and it includes aspects of the Scotch whisky industry.

11. This review focused on how the COMAH regime is applied to chemicals manufacturing and chemicals storage. These sectors comprise approximately 25% of all COMAH operators in Great Britain. The focus was in large part a response to submissions made by the sector to the BIS led *Transforming Regulatory Enforcement* consultation over the summer / autumn 2011.

Features of the COMAH Regime

12. Sites fall into either the 'Top Tier' or 'Lower Tier' of the regulatory regime depending on the quantities of materials handled. Top Tier sites cover larger volumes, presenting more significant hazards and being subject to the highest level of regulatory requirements.

13. The main features of the regulatory and compliance regime are as follows:

- a. Safety Report: A written demonstration of safe operation required of Top Tier COMAH sites. This report must demonstrate that all measures necessary for the prevention and mitigation of major accidents have been taken. For new sites a report must be submitted to the Competent Authority prior to operations commencing on site and then reviewed and revised every five years or sooner if there are significant changes. The Competent Authority must assess safety reports against the requirements and can prohibit operations if there are serious deficiencies in the measures put in place by the operator.
- b. Major Accident Prevention Policy (MAPP): A document required of all COMAH sites, setting out the operator's safety management systems, operational controls, emergency planning and monitoring arrangements – this normally forms part of the safety report for top tier sites.
- c. On-site emergency planning: Sites must prepare and test an emergency plan to prevent escalation of incidents and to deal with the on-site consequences of a major accident.

- d. Off-site emergency planning: Top Tier sites must provide information required under the COMAH Regulations to the local authority to allow those authorities to prepare a plan for the off-site consequences of a major accident.
- e. Scheduled inspections: The regulator carries out statutory scheduled inspections of COMAH sites to verify that the measures set out in the *safety report* and/or the *Major Accident Prevention Policy* exist in practice and to check compliance with the requirements placed on duty holders under the Regulations.
- f. Investigations: The regulator must investigate major accidents and also investigates other significant incidents at sites (or in follow up to complaints) against published criteria.
- g. Enforcement: The regulator is required under the COMAH Regulations to prohibit activities where there is evidence of a serious deficiency in hazard management and controls. They also have a range of other enforcement tools, including notices and ultimately criminal prosecution, to deal with serious risks, secure operators' compliance, and hold operators to account for serious breaches.

The regulators

14. The Health and Safety Executive (HSE) and the Environment Agency are jointly the Competent Authority for COMAH in England and Wales. The Competent Authority regulates COMAH and oversees operators' requirements and compliance, they are responsible for site visits, incident investigation and for assessing safety reports. In Scotland the Competent Authority comprises HSE and SEPA (the Scottish Environment Protection Agency). HSE leads much of the strategy and policy work and provides the larger share of inspection teams.

15. Local Emergency Planning Authorities (EPAs) lead on the local (site specific) off-site emergency planning aspects of the regime, and local planning authorities (LPAs) lead on related planning applications for 'Hazardous Substances Consent' for using and storing controlled substances. HSE has a role in advising local planning authorities on Hazardous Substances Consent, and on aspects of local planning (such as housing) which involve development in close proximity to COMAH establishments.

16. Both parts of the Competent Authority also deal with other regulatory requirements at some COMAH sites – for example for more general health and safety issues and under the Environmental Permitting Regime. A survey by The Chemical Industries Association indicated that two-thirds of their members received separate visits from different inspectors from the environmental regulators for different environmental requirements.

Charging in the COMAH regime

17. The Competent Authority recovers all of its costs from COMAH operators for delivering its functions under the regime. Operators are charged (by the hour) under the COMAH regime. Charges apply to: assessment of safety reports, inspections, enforcement action and investigations. Regulatory effort is charged for on a time and materials basis. We encountered a perception that the approach in Great Britain is unique within the EU in recovering costs directly for COMAH enforcement in this way. However, the Competent Authority advise that Norway, Poland and some regions of Germany also operate charging regimes.

18. COMAH is by its very nature a demanding regime requiring significant, often complex and specialist safety management systems. Larger COMAH companies can operate very large sites comprising extensive plant and complex chemical processes. Inspections can involve a team of four or five regulatory inspectors including specialist inspectors on site for a number of days, and can lead to follow up activity where significant non-compliance is discovered and further cost recoverable engagement with the regulator.

19. The Competent Authority estimates that £3.5m of costs were recovered in 2011/12 specifically from the chemicals manufacturing and warehousing sector under the COMAH regime¹. Across 200 companies that equates to an average of £17,500 per company – including inspections, safety report assessment, investigations and enforcement work. The average cost per company across all COMAH sites was £7,500 for inspections only – not including costs for safety report assessment, investigations or enforcement work.

20. The highest costs apply to the biggest most complex sites, including 8 refineries. The industry profile includes a long tail of smaller, less complex businesses and as a consequence 50% of the remaining COMAH sites receive an invoice of below £5,000 and 35% receive one below £2,000. Some businesses that fed into this review reported significant variations in costs over a period of years. The Competent Authority advises that this can occasionally occur, although if the variation is high (say £100,000 as reported in some cases) this would be due to the charges associated with an investigation into a major incident, not simply a variation in the scale of scheduled inspections.

¹ This is estimated as the data is not organised by specific sub-sectors within the COMAH regime.

Economic context

21. The chemicals sector is important for wealth generation in its own right (with an output of £9.5bn in 2010) and plays an important role in the supply chain for many other sectors. Nevertheless it has shrunk in terms of both output and employment over the last decade. The sector produced Gross Value Added (GVA) of £11.5bn in 1997, which had fallen to £9.5bn in 2010. Over that time its share of National GVA fell from 1.6% to 0.7%. Employment has fallen from 173,000 in 1996, and now stands at 100,000 (0.4% of total employment, a fall from 0.7% in 1996).

22. The industry has undergone a major restructuring over the last couple of decades. It has moved from the days of a dominant ICI and mainly UK ownership to a more fragmented sector, with two-thirds of UK chemicals sites now being foreign owned. In some cases the UK is down to its last supplier of certain products posing some security risks and supply chain risks. For example, ten years ago there were several chlorine manufacturers in the UK and now there is just one.

23. There is growing competition in the sector from oil producing areas such as the Middle East where these countries are looking to increase their involvement in the manufacture of downstream products to exploit the added value in these markets, moving beyond simply selling their oil to operators in other countries.

24. Companies headquartered overseas will inevitably be making investment decisions across a global portfolio - between their UK and other sites. In this context, it is important that the regulation of sites is not perceived as a disincentive to further investment and thereby a limit on growth. Given the specific nature of the GB cost recovery regime, it is particularly important that charging mechanisms do not cause unnecessary burdens or irritation to companies. In some cases the risks may be more subtle than immediate plant closures – appearing instead as decisions not to keep plant up to date, leading to a gradual wind down of sites. In addition, as ‘aging plant’ is a strategic theme for the Competent Authority’s inspections, decisions not to invest in sites may have knock-on effects within the regulatory context as well.

25. The Competent Authority’s assessment is that significant pressures on operators to reduce costs in order to remain globally competitive have resulted in some COMAH sites reducing manning levels, including in some expert roles in the management of major hazards, and led to cuts in investment in plant and equipment. In the view of the Competent Authority this has served to increase the risk of a major accident at some sites

and they state that they have sought to rebalance these risks through increased scrutiny in order to provide the necessary levels of public protection and assurance.

Recent history of the regulatory regime

26. Major incidents that have shaped the UK and EU approach to controlling industrial hazard sites include an explosion at the Flixborough chemicals manufacturing plant (which killed 28 people in 1974), the fire and explosion at the Buncefield fuel depot (2005) and Seveso in Italy (which involved a release of toxic chemicals over a town of 17,000 inhabitants just north of Milan in 1976).

27. Reviews following the Buncefield incident led to many changes in technical requirements (for example on fuel storage sites) and to the way that the regulator carries out its functions. These reviews also drew on the Competent Authority's 10 years experience of delivering the COMAH regime, and on feedback sought by the Competent Authority on the regime from operators. The CA has also had some success in recent years in recruiting people within specialist disciplines (such as mechanical engineers) to fill long-standing vacancies. Of particular interest to this Focus on Enforcement review, recent changes have included:

- a. a 'Remodelling Programme' within the Competent Authority that led to, amongst other things, more strategic and integrated working between HSE, the Environment Agency (and SEPA in Scotland);
- b. the Environment Agency reducing the number of its inspectors dealing with COMAH sites, so that those individuals could increase their knowledge and experience of the regime by spending a higher proportion of their time on COMAH work;
- c. closer integration of specialist inspectors (including Environment Agency inspectors) into the planning and delivery of inspections to improve focus and avoid separate visits on individual topics;
- d. a shift in regulatory effort away from office-based Safety Report assessment to more site-based engagement;
- e. the provision of an 'Intervention Plan', to each COMAH site in April each year, setting out the planned inspections for the site over the coming 2 years;
- f. more strategic topic based inspection focusing on stated priorities and themes – like aging plant and worker competence – and against which operators' performance is scored;

- g. greater differentiation in inspection reports between significant issues requiring action by operators and lower priority recommendations, and a move by the Competent Authority to close out issues more quickly to avoid protracted engagement.

28. The Competent Authority is now a couple of years into implementing its Remodelling Programme. As well as changing how the regulators work together the programme has made changes to the interaction with regulated businesses, and the programme was developed in consultation with the main trade bodies in the sector and with individual businesses.

29. The Competent Authority reports that around 100 serious incidents occur every year at COMAH sites. Around half of these are precursor events to bigger problems potentially affecting large numbers of people on and off site. Of these, the regulator identified typically 5 a year that they would class as 'EU reportable' major accidents. The regulator also reported that these figures have remained fairly constant for some time.

30. The Competent Authority reports that it has moved from an essentially hazard-based system of planning inspections to a more risk-based model that builds in, for example, an assessment of businesses' management systems and capability. In addition they are looking to build up and incorporate a wider range of historical performance indicators that could inform the risk assessment and the resultant planning of interventions and site visits.

31. The Department for Communities and Local Government are working with HSE, EA, industry and others to reduce the likelihood of delays in planning and in obtaining Hazardous Substances Consents and in particular to:

- a. better understand the reasons for delays;
- b. respond to the Taylor review of planning guidance which recommended that guidance on Hazardous Substances Consents is revised, and consider how best to improve understanding of legislative and policy expectations so as to reduce delays in getting Hazardous Substances Consents;
- c. continue to pursue an ambitious programme of reforms to simplify and speed up the planning system.

32. In addition the HSE has been leading for the UK in negotiating revisions to the EU Seveso Directive. They have successfully argued that the regime should not bring into scope sites that do not present any major accident potential, and that the Directive should not move to rigidly mandated inspection frequencies, hence keeping the UK principle of risk-based and proportionate enforcement.

SECTION 2: WHAT WE HEARD

33. This section summarises the key evidence gathered through the review. It brings together input from detailed discussions, website postings and other written submissions.

34. This summary deliberately focuses on those areas that were identified as issues and that could therefore present the most fruitful opportunities for change and development. However, the summary also acknowledges the positive feedback that was received and specific examples of good practice that were welcomed by the regulated community.

35. The key themes emerging from the review were:

- the need for the Regulations is clearly understood and accepted;
- the quality of inspectors is usually high and is valued;
- in general there has been a good relationship between the sector and the regulators;
- Intervention Plans have been a welcome development;
- the existence of a charging regime and way it operates is a major irritant;
- the charging regime may benefit from a clearer, more contractual basis;
- the sector would welcome further integration of the Joint Competent Authority's operations;
- where inconsistency in enforcement arises it is a significant annoyance;
- there doesn't seem to be a widely understood, used or independent appeals mechanism;
- the sector would welcome earned recognition and would welcome evidence of the use of performance data in the intervention planning process;
- some businesses deliberately avoid operating at a level that would bring them into the regime in a way that limits their growth;
- delays in decisions on planning and Hazardous Substances Consents – which can take 12 months or longer – can limit business growth;
- streamlining the approach to Safety Reports, ensuring they don't become an end in themselves, and giving greater certainty on how to resolve issues arising would be welcomed.

36. These key points are explained in more detail below:

- **The need for the COMAH regulations is clearly accepted by industry** - being critical both to managing the hazards and for maintaining public confidence.
- **The quality of regulators as a whole was widely acknowledged** - for their professionalism and knowledge, with specific examples given of supportive engagement with businesses and the provision of high quality technical advice and genuine added value.
- **The relationship with the Competent Authority** – was widely reported as being historically strong, with good examples of consultation and collaboration with the sector, including very effective joint working on guidance materials, a professional approach overall and a typically constructive dialogue.
- **The move to Intervention Plans** – was welcomed by the sector, and whilst the Competent Authority is not always able to stick precisely to the plan it has been a helpful move in terms of transparency, business planning and budgeting.
- **The existence of the charging regime and the way it operates is a major irritant**, and was generally seen as *the* major irritant. Issues included:
 - **Hourly charging** – which means there is no upper cap or certainty for the business. Some parts of the industry said they would prefer a banded and performance linked charging regime, which would provide greater certainty of the charges in year.
 - **Transparency and consistency** – was questioned by businesses (and their auditors) and trade bodies who reported differences in the way that charges were applied and an associated lack of transparency on occasions behind the final bill. We heard examples of inconsistencies in how inspector travelling time was charged (some companies were charged for it, some were not), how staff handovers were charged (companies were variously charged for one or both inspectors), and of being charged when new inspectors were reading up and getting up to speed on sites. Where the inspector has been changed several times in a relatively short period this is a particular annoyance.
 - **Increasing charges** – there is a widespread perception in the sector that chargeable hours are increasing, and some businesses reported significant

increases when it was unclear to them that the hazard or performance on their site had changed. For example, one company stated it had seen charges rise from an average of £20,000 per annum to £120,000 for a year.

- **Feeling like an operator tax** – a range of views were expressed by business that demonstrate they feel the charging is more driven by “covering the cost base, than cost recovery”, and some feel it is effectively an operator tax.
 - **The impact on the relationship** – aspects of advice under the COMAH regime are chargeable and some operators feel this is changing the nature of the supportive relationship with their inspectors. Some in the sector said it was becoming a disincentive to seek advice as a) the request for advice might be charged, and b) this might result in an inspection to check the outcome, which would result in further charging.
 - **The impact on investment** – charges were identified as being sufficiently high in some cases that they could impact on spending decisions for investments and improvements – there were some reports of such investments being postponed.
 - **There are cliff edge effects** - charges jump when COMAH thresholds are crossed, and a whole site will come into scope even if only part of the business is COMAH activity.
- **Standards for chargeable activities** – questions were raised over the extent to which business was seen as, or treated as, a customer in their engagement with the regulator. Some felt that charging required a clearer and more contractual relationship, making charging policy and performance standards more transparent, and potentially helping with some of the tensions around charging. Comparisons were made between the approach of the Competent Authority and that of other bodies which charged by the hour (eg. lawyers, accountants).
 - **The joint Competent Authority is not always joint** – the Competent Authority has made a number of significant changes over recent years with the clear aim of improving the extent to which it can operate like a single body, and these changes have been welcomed by the sector. However, the sector is very keen to see further improvements. Not all inspection visits are carried out by joint teams (and this can on occasion result in repeat information requests and contradictory advice). Businesses and sector bodies report that the differences in policy and approach are still often visible on the ground. Businesses would typically welcome a ‘single voice’ and a single point of contact. The sector recognises that enforcement of the COMAH regime would need different specialist knowledge and roles to exist within any more unified service.

- **Scope for further joining up** – there was also a suggestion that there was additional scope to bring all aspects of health and safety and environmental regulation into a single, business focused service (meaning other health and safety and environmental matters would be considered at the same time as COMAH matters). This approach is apparently used in some other Member States for COMAH sites and in a survey carried out by one of the trade bodies two-thirds of businesses said they currently receive separate visits for COMAH and for environmental permitting.
- **Inconsistency** – was a frequently raised issue. Operators generally accept that there is a human element and that differences in experience will lead to differences in assessments. The regulators also explained that apparently similar sites and operations can vary for reasons that are not necessarily immediately apparent (for example to take account of the geology beneath the site and potential impacts of releases of contaminants). Nevertheless businesses reported changes of opinion on the same site year to year when inspectors change and inconsistencies between sites in single company groups.
- **Appeals mechanisms** – businesses are generally reluctant to challenge decisions made by ‘their’ regulator – despite sometimes feeling that decisions are inconsistent (as described above), are unclear in their rationale, or in rare cases are poor. In part this reflects a perception that they are merely raising issues within an established line management chain (which is seen as very unlikely to overturn a team member’s judgement), or that they are ‘asking the police to police themselves’. There is also a fear of damaging the relationship with the regulator and local inspectors. In addition, there is the knowledge for the business that they will potentially increase their charges if an issue is raised and takes longer to resolve as a result. The inability to seek a second opinion in a non-confrontational manner is a real issue and there is evidence of companies that are either unaware of or unwilling to use what mechanisms are in place, and that these are not seen as impartial.
- **The sector would welcome earned recognition** – the sector reported that it wasn’t clear how far performance and site safety records were being taken into account when the Competent Authority planned inspection frequencies. It was generally felt that performance record wasn’t leading to any reduction in the level of scrutiny by the regulator. In addition there are some third party audit schemes operating in the sector, and industry bodies would welcome exploring the role that these might play in the management of compliance and planning of interventions by the Competent Authority.

- **Deliberate avoidance** – some companies actively avoid the regime, e.g. by managing inventories – and some smaller trade bodies counsel their members to avoid expanding in a way that would bring them within scope of COMAH.
- **Long planning delays on planning and Hazardous Substances Consent** – which can disrupt a business's growth. A number of postings referred to significant delays within the Hazardous Substances Consent process which is managed by Local Authorities in conjunction with the HSE. The process can take 6 to 12 months (or longer) and delays have obvious implications for expansion, entering new markets and securing orders. It is not clear whether respondents that raised these specific concerns were aware, or not, of the current programme of work to improve planning processes, as set out in paragraph 31.
- **The Safety Report is burdensome** – the sector welcomed the move made by the Competent Authority to use more site-based assessment of the Safety Report, but some reported that it is onerous and questioned whether the key value of the plan could be obtained from a shorter and more focused exercise. Some feared it could become a distraction from other safety activity. There is a concern that sometimes companies are being asked to prove a negative and that there is no clear understanding of when enough work is enough.

ANNEX A

WHAT WE WERE TOLD IN WRITTEN SUBMISSIONS

The following is a summary of the postings made on the Focus on Enforcement website, and of comments made in separate written submissions.

Summary of individual postings

Posting 1

- **Scope and charging:** Came under the COMAH regime because of environmental aspects of the business – but then been hit by significant charges for health and safety aspects as a result.
- **Separate inspections:** HSE and EA inspected separately and findings were presented separately.

Posting 2

- **Site based assessment:** Welcome the principle of more site based assessment of the Safety Report in principle, but recognise it poses its own challenges for the business and regulator.
- **Planning site visits:** Would welcome further clarity in preparation for visits: clear agendas, ensuring the right people are fielded on both sides.
- **Joint Competent Authority:** Can see cracks in the joins, such as: different priorities and expectations; lack of coordination; different requests for the same information; separate site visits; different policies and application of principles such as ALARP (as low as reasonably practicable).
- **Single Competent Authority:** Would welcome single CA, in particular single point of contact. Recognise it still needs different specialist knowledge and roles.

Posting 3

- **SME requirements:** A question as to whether the requirements of the regime might be over-interpreted from an SME perspective and what they are asked to comply with.
- **Guidance:** Approved Codes of Practice may be of further help to SMEs if they included examples of interpretation and application for a variety of sectors / scenarios.

Posting 4

- **Costs of the regime:** Proving a significant negative. Includes repeat requests for more and more information, including additional 'proof' that risks have been minimised.
- **Costs of consultants:** Identified as a 'hidden cost' of the regime where these need to be used for specialist input.
- **Joint Competent Authority:** Reports that the CA rarely speaks with one voice.
- **Requirement creep:** Concerns that the costs of compliance are increasing but that the justification is unclear.

Posting 5

- **Charging:** Feel the charges are applied as revenue generation or an operator tax.
- **Value of inspectors:** Value the engagement with inspectors, including specialist inspectors – provide industry wide view, add value.

Posting 6

- **Value of inspections:** Support inspections, have found some very useful.
- **Continuity:** There are practical issues when the inspector changes – repeating old ground, bringing new people up to speed.
- **Consistency:** Experience of different approaches and opinions, recognise that inspectors are individuals and have own experience, but feel consistency is not there.
- **Openness and timeliness:** Would expect an inspector to say on the day, and discuss, if they are considering issuing a notice – not for example be phoned the next day.
- **Quality of relationship:** Feel that consistency and openness is vital.

Posting 7

- **Limitations of Safety Report:** Feel too much time is taken up by the Safety Report and in providing details in it. Takes away from other efforts to manage and improve safety. Risk that the Report becomes an end in itself.
- **Majority of inspectors good:** Inspectors generally personable. Some felt to be jobsworths or unreasonable – 'but they are in the minority'.
- **Charges:** Feeling that the CA's income relies too much on the volume of work under the regime.

Posting 8

- **Charges:** Charged for a new inspector to read notes on the company when there is a change of personnel. "Hourly rates are extortionate".

Posting 9

- **Quality of inspection:** Experience is generally satisfactory, fair and reasonable. 'Some of the specialist inspectors have been particularly helpful with their constructive criticism'.

- **Minority issues:** Isolated examples of specialists who have felt unduly critical.
- **Forward planning:** Welcome the 2 year Intervention Plan issued by the CA, and welcome the review planning meetings for Safety Reports (for the 5 year refresh).

Posting 10

- **Joint Competent Authority:** Have seen improvements to the CA joint approach and recognise greater efforts being made.
- **Competence of inspectors:** Feeling there has been a 'dumbing down', with breadth of regulations making it hard for inspectors to be competent over a wide scope. Suggests the need for more specialist inspectors.
- **Charging:** Referred to as 'COMAH tax', and argues that it is being applied more widely ("to all communication between industry and HSE").
- **Additional advice:** Would value the regulator providing information on a 'without prejudice basis'. See them as in an ideal position to identify best practice, potential suppliers and service providers.

Posting 11

- **COMAH coverage:** Would like to see risk-based framework to determine where COMAH applies, rather than current hazard based regime. [Note: think this comment relates more to the regulations – which sets clear requirements based on amounts of hazardous substances – so less a comment about enforcement].

Posting 12

- **Quality of relationship:** Feel the CA is willing to work with industry to resolve issues, open relationship, respect on all sides.
- **Joint Competent Authority:** Planning for inspections is usually a joint effort.
- **Quality of inspections:** Specialist inspectors often more value, sometimes get a useful expert opinion on things.
- **Duplication:** Think there may be duplication on aspects of environmental regulation – with sometimes the same inspector separately covering permitting and COMAH.
- **Safety Report limitations:** Requires a significant amount of effort, doesn't enhance existing systems – may benefit from a template and less detailed version.
- **Additional advice:** Feel the CA is sometimes reluctant to share best practice that they may have observed on other sites.
- **Hazardous Substances Consent:** Operates between the LA and HSE. Can take many months to wait, then discuss, then resolve. Leads to potential loss of business – industry needs to be able to move quickly where there are opportunities to expand.

Posting 13

- **Charging in UK:** Current charging policy discriminates against the UK chemical industry – practice is not encountered across the EU.
- **Charging breadth:** Whole site comes under COMAH charge once it crosses the threshold, whereas it might be a limited part of the activity that brings it into the regime.

- **Applying best practice:** Applying best practice to existing plants can have serious costs and disruption impact. Requests should be fully risk-based if applying best practice requires changes quicker than the natural lifespan of equipment.

Posting 14

- **Breadth of regime:** Question inclusion of some business sectors and sites in the regime – e.g. large caravan sites included due to volumes of LPG.
- **Consistency:** Approach to compliance varies by inspector.
- **Charging - variability:** Can include the need to pay for a new inspector to read notes on a company when there is a change of inspectors – making costs unpredictable.
- **Charging – scale:** For users of LPG that cross COMAH threshold, can add 15% to energy bill.
- **Charging in UK:** Understand that other EU states have different costing and inspection strategies – including fixed fee or no charge at all. UK method seems unique.

Posting 15

- **Good inspector:** Has a positive handle on the business's operations, give practical advice and adds value to the company. Adds value to internal management processes.
- **Licence to operate:** Safety plans and the COMAH regime essential to the industry.
- **Scale of Safety Report:** Costly in time and money. Drain on resources and takes away from general risk management.
- **Earned recognition:** Would like to see visits scaled down once a good compliance record is achieved.

Posting 16

- **Safety Report:** Very costly and resource hungry. Protracted process. Risks being a distraction.
- **Proving risk management is adequate:** Difficulties providing adequate information for things that cannot by definition be proven.
- **Inconsistency:** Different judgements from different inspectors on the same issue ('completely different conclusions after looking at exactly the same thing').
- **Charging:** Significant increase in COMAH charging over recent years within the company, from £20,000 per annum to £120,000 per annum. Management time and third party consultants are an additional cost on top of this.
- **Multi-site businesses:** Feel there is more scope to rationalise inspection regime for multi-site businesses.

Posting 17

- **Quality of relationship:** Very good experience generally of working with the regulator.
- **Positive changes:** Remodelling has been very good – the more 'pro-active' approach is welcome. Needs the right level of resource behind it.
- **Quality of inspectors:** Constructive, helpful, supportive of the growth of the business, pragmatic.

- **Meeting planned inspections:** The need to respond to incidents means that not all planned visits can be carried out.
- **Reporting delays:** Can be slowness in issuing reports from intervention visits – delays improvements.
- **Planning and Consents delays:** Delays in hazardous substance planning consents can hinder the business's ability to grow.

Posting 18

- **Charging:** Question over number of charged hours and ambiguity for the business as to how the total was reached. Feeling that the use of consultants by the CA had increased the charge.
- **Variability:** Figures showing that the annual charge for the business had varied between £8,000 and £42,000 over a five year period.
- **Consents delays:** Can take a considerable time – well beyond 6 months and has taken over 12 months or more in some cases. Has a commercial impact.
- **Consistency:** Experienced improvements over recent years.
- **Supportive advice:** Specific examples of helpful advice from the regulator – “HSE Newcastle were especially helpful in explaining how to set Leading and Lagging indicators for Process Management Performance Indicators”; “HSE has been very helpful in recent years providing guidance when asked for it”.
- **Continuity:** Frustration over frequency of changes for site inspectors – can be within two years – just as relationship is being built up.

Posting 19 [Trade body – includes results of a survey of members]

- **Joined up inspection:** ‘Remodelling’ work has improved transparency and reduced duplication over the last couple of years. Still room for improvement.
- **Joining up the Competent Authority:** Would welcome consideration of more radical models for organising enforcement, including possibly bringing under one regulator. Could support better consistency, one set of policies, one set of operational arrangements.
- **Joining up beyond COMAH:** Think there is also a case to consolidate all health and safety, environmental and local authority enforcement issues in one place for high hazard sites. Would be more industry friendly. Is practiced in some other EU member states.
- **Charging:** Remains the single biggest issue raised by business with trade bodies. Rising trend in charges. Disincentive to growth and potential leading to some planned site improvements being deferred due to spending decisions.
- **Advice:** Recognised area of good performance, few issues, quality and accurate advice provided.
- **Charging and advice:** Concern that there is an increasing trend to charge for advice – and a risk this will suppress good communication between industry and regulator.
- **Continuity:** Where problems arise in relation to advice this tends to be linked to significant turnover of inspection staff.
- **Inspection planning:** Has improved significantly with the provision of 2 year Intervention Plans.
- **Increased inspections:** Some reports of increasing inspection volumes, when not clear that the hazard or risk has changed.

- **Preparing for inspections:** Move to Strategic Topic Inspection has been helpful. Has improved transparency of what is expected. Delivery Guides for inspection topics (guidance for inspectors) visible on CA website and therefore can be helpful to operators.
- **Consistency:** Reports of some inconsistencies across the country – inspectors at company sites requiring different things in different parts of the country.
- **Satisfying requirements:** Reports of some problems ‘closing out’ issues raised, in particular where specialist inspectors are felt to have a particular ‘agenda’ on specific technical aspects.
- **Duplication:** Most member sites are covered by both the COMAH and the Environmental Permitting Regime. About two-thirds (64%) of respondents said that different inspectors covered the environmental aspects of the different regimes – which can lead to duplication of assessments.
- **Planning and Consent delays:** Regularly hear of problems for member companies on land use planning and Hazardous Substance Consent. Standard time is 6 months, but has inherent delays and does not feel business friendly process. Would like shorter timescales and streamlined process. Align better with other aspects of the regulations.
- **Resource pressures and cost transfer:** Worried that cuts to LAs may lead them to transfer aspects of the off-site emergency planning to business. This covers planning for dealing with incidents that would have an impact off-site, and is currently a shared responsibility.
- **Training requirements:** Limited examples of the regulator suggesting individuals at operators attend courses. Feel this is perfectly reasonable where a competence deficiency has been identified.
- **Tougher enforcement:** Generally finding an increasing trend towards formal enforcement such as Notices “at the first sign of a breach”, as opposed to being given advice and time to address. Also a greater tendency to more intensive follow up inspections and enforcement.
- **Professionalism in enforcement:** Positive comments received about the professionalism and fairness of regulators when dealing with formal enforcement.

Posting 20

- **Continuity:** Concerned about inspectors “continuously changing”. Means there is a repeated need for site familiarisation, bringing inspectors up to speed. “No feeling of continuity... at any of the 5 company COMAH sites”.
- **Resource planning:** Intervention Plans can suggest inspections will take multiple days, then only take a few hours (linked to continuity issue).
- **Intensity:** Feel that aspects of the inspection / Safety Report review were overly strenuous.
- **Changing requirements:** Changes to aspects of the environmental assessment have led to additional costs.

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

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