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|  | 21 February 2025 |

**Re: Post Implementation Review (PIR) of The Control of Major Accident Hazards Regulations 2015 (COMAH 2015) (S.I. 2015/483)**

Fuels Industry UK is pleased to respond to the Health and Safety Executives questions relating to the Post Implementation Review (PIR) of The Control of Major Accident Hazards Regulations 2015 (COMAH 2015) (S.I. 2015/483).

Fuels Industry UK represents eight manufacturing, supply and marketing companies that operate the six major oil refineries in the UK and source over 85% of the transport fuels used. Our associate membership comprises a wide range of companies - from heating fuel supply and Liquefied Natural Gas (LNG) imports, renewable and sustainable fuel producers, to terminals and pipelines. In this role Fuels Industry UK engages with the HSE at many different levels.

Each individual company interacts locally and on a regular basis with their HSE COMAH Intervention Managers (CIMs) and in many instances with HSE specialist inspectors. Each member agrees an inspection and intervention schedule for their assets at the beginning of each year. Over recent years the number of inspections and interventions have increased significantly. Our members have voiced their concerns with the increased number of interventions, with the main issue being the additional time and resource that it would take to manage the workload for themselves and the HSE. This led members to discuss the number and timing with their inspectors to agree a manageable inspection schedule.

Fuels Industry UK represents our members interests at various fora where the HSE and its Competent Authority partners are represented. Fuels Industry UK also has a good relationship with the Chemicals, Explosives & Microbiological Hazards Division (CEMHD) Director and Senior Leadership Team (SLT). This relationship is very important to Fuels Industry UK as it provides a conduit for direct one to one dialogue on the issues affecting the sector. To strengthen this relationship the CEMHD SLT has accepted the invitation to for a representative to attend Fuels Industry UK Safety and Environmental Leadership Committee meetings. This committee comprises representatives of member companies that manage the site process safety teams and it reports to Fuels Industry UK Council (essentially the Fuels Industry UK Board). These relationships and connections are extremely valuable to Fuels Industry UK and our members, as is the opportunity for working with the HSE and other key stakeholders through other fora.

The relationship with the CEMHD SLT is two way, as it also proves beneficial to the HSE management to have a route to reach out to Fuels Industry UK members when needed. This became especially evident during pandemic as issues started to emerge. Fuels Industry UK and our members worked very closely during the COVID-19 Pandemic to ensure that process safety was maintained, and the workforce were protected by developing best practice and managing risk.

Fuels Industry UK is aware that in some instances there is a disconnect between the position of the CEMHD SLT and individual specialist inspectors. However, it is not clear whether this is because the messaging has not been communicated, or whether individuals are using their position to drive personal agendas.

In terms of the future relationship, Net Zero and meeting the Governments targets we must continue to work together. There is a distinct need to maintain open and honest dialogue with the HSE to ensure that both sides understanding of the issues and the potential resolutions, move forward at a similar rate. This is especially the case in ensuring that the HSE remains an enabling regulator. Understanding industry’s position on emerging challenges and the impact of the potential resolutions will become more important in the transition to 2050.

Yours sincerely,

Simon Wood

Environment Health and Safety Specialist

**Fuels Industry UK Response to the Health and Safety Executives Post Implementation Review (PIR) of The Control of Major Accident Hazards Regulations 2015 (COMAH 2015) (S.I. 2015/483)**

**Are The COMAH 2015 regulations fit for purpose?**

Yes, Fuels Industry UK believes that the Control of Major Accident Hazards Regulations 2015 (COMAH 2015) (S.I. 2015/483) are fit for purpose.

Any amendments to the existing regulations that introduce prescriptivity and additional burden should be avoided. This is it would be a red flag to potential investors interested in UK infrastructure development.

**Have any unintended consequences of COMAH 2015 and subsequent Secondary Legislation amendments emerged over the last five years?**

Fuels industry UK is not aware of any unintended consequences of COMAH 2015 or any issues with subsequent secondary legislative amendments.

We are, however, deeply concerned with the approach to risk assessment being developed under the COMAH Regulations[[1]](#footnote-2) by the HSE predictive risk assessment specialists through the Chemicals and Downstream Oil Industries Forum (CDOIF).

The CDOIF is supposed to be a voluntary forum where Industry and the competent authority can come together to discuss issues and develop resolutions by consensus.

This has been a matter of discussion between the HSE and COMAH site operators for over 10 years. The COMAH Regulations are not prescriptive about how risk assessment should be carried out. Both qualitative and quantitative approaches are allowed, based on available information and with the information required in Safety Reports clearly identified[[2]](#footnote-3). HSE guidance on the Regulations[[3]](#footnote-4) states:

*“In demonstrating ALARP, it is not a requirement of the Regulations that quantified risk assessment should always be undertaken. However, in some cases, this may help to set priorities when comparing risk values, particularly where new technology is used and where there is no established good practice for comparison.”*

The refinery operators accept that quantitative risk assessment represents best practice, and this is often carried out where appropriate, meeting the requirement that risk assessment be *“*suitable and sufficient*”* as required under the COMAH Regulations*.* Although failure rate information is available to individual refiners, quantitative risk assessment performed using this information is sometimes not accepted as being sufficient.

Fuels industry UK and the refinery operators question whether the requirements stated can be met with as the CDOIF guidance and insistence from the HSE predictive assessors that only a specific methodology for quantitative risk assessment will be accepted.

The draft guidance also moves away from the vital risk assessment principle of “Tolerable if As Low as Reasonably Practicable” (TifALARP). Its removal from COMAH risk assessment and the application of Relevant Good Practice (RGP) or equivalent, implemented retrospectively and independently of residual risk or CBA will increase the burden on industry. The result will be that industry will have to review their Environmental Risk Assessment for all potential accidents and hazards to the environment. Fuels Industry UK believes that UK and EU regulations provide the option to demonstrate as low as reasonably practicable (ALARP) without complying with Good Practice.

We also think it is vital that the guidance being developed follows the requirements set out in the Regulators’ Code[[4]](#footnote-5) that HSE are required to comply with under the Legislative and Regulatory Reform Act 2006[[5]](#footnote-6). This includes the following requirements under Section 5 “Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply”:

1. *Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.*
2. *Regulators should publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language for the audience.*

There are also broader requirements under Section 1 covering the way in which regulators should carry out their activities in a way that supports those they regulate, including to “*avoid imposing unnecessary regulatory burdens through their regulatory activities”.*

In view of the differences between the understanding held by refinery operators regarding the legal requirements under the COMAH Regulations and the unreasonable expectations held by the HSE predictive assessors involved in drafting the guidance, Fuels Industry UK has withdrawn from the CDOIF.

**Are there any further opportunities for reducing burdens on business?**

Given the plethora of groups that are attended by the Competent Authority, Trade Associations and Institutes which perhaps should have been closed after delivering on their original objectives. Fuels Industry UK believes that a review and aggregation of groups would help to focus their output.

Fuels Industry UK wishes to work with the Competent Authority and other stakeholders to review the number of groups and assess what they deliver and whether there is a need to close them off, reform or redefine their focus. We feel that this exercise should bring together all UK COMAH regulated industry with a renewed focus on delivery of net zero.

1. Regulation 7 Schedule 2 [↑](#footnote-ref-2)
2. Regulations 9 and 10 Schedule 3. [↑](#footnote-ref-3)
3. [HSE Approved Code of Practice L111, “The Control of Major Accident Hazards Regulations 2015 - Guidance on Regulations”](https://www.hse.gov.uk/pubns/priced/l111.pdf), 2015, paragraph 90, page 23. [↑](#footnote-ref-4)
4. [The Regulators’ Code](https://assets.publishing.service.gov.uk/media/5f4e14e2e90e071c745ff2df/14-705-regulators-code.pdf), April 2014. [↑](#footnote-ref-5)
5. [The Legislative and Regulatory Reform Act 2006](https://www.legislation.gov.uk/ukpga/2006/51/pdfs/ukpga_20060051_en.pdf). [↑](#footnote-ref-6)