



For the attention of the Chemicals Policy Unit

Department of Enterprise, Trade and Employment  
Room 400 Davitt House  
Adelaide Road  
Dublin 2

**Date:** 22<sup>nd</sup> December 2009

**Ref:** 09A0355

**FBS:** DETE

**Re: Public Consultation on Draft Chemicals (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2009**

Dear Sirs,

We have read with interest these Draft Regulations which are intended to replace the existing Seveso Regulations (S.I. no. 74 of 2006) and to apply the levels of penalties set out in the 2008 Chemicals Act to Seveso installations.

We welcome the inclusion of more definitive roles for the external authorities in relation to the establishment of External Emergency Plans. As these plans are intended to minimise the impact of a major accident scenario, they are an important element of meeting the objectives of the Seveso Regulations in reducing risk to people and to the environment. The identification of more definitive roles will therefore improve the co-ordination in developing these Plans.

We note that this proposed amendment is in line with arrangements made in the Chemicals Act, which makes provision for the enforcement of several items of EU legislation, including the Seveso Directive and the REACH Regulation. However we are conscious that one of the most significant changes under the REACH Regulation will be the transition from the current system of classifying Dangerous Substances to the Globally Harmonised System (GHS). This change will require a further amendment to the Seveso Directive, and in turn to the Seveso Regulations, which could potentially have complications as it will require that new criteria are drawn up for identifying sites that qualify as Seveso installations.

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There will be a transitional period during which both the current legislation for classifying dangerous substances and the new REACH Regulation will be in place. The Regulation stipulates that after entry into force the deadline for substance reclassification is 30<sup>th</sup> November 2010 and for mixtures the deadline is 31<sup>st</sup> May 2015. The current Directives for Dangerous Substances (67/548/EEC) and Dangerous Preparations (1999/45/EC) will be repealed on 1<sup>st</sup> June 2015. Before this time, we expect that a further revision to the Seveso Regulations will be required, as Schedule 1 of the Seveso Regulations, “*Dangerous Substances to which the Regulations apply*”, is based on the classifications given in the current Directives.

The reason why it appears that this transition will be complicated is because of certain changes to the system by which materials will be classified. For example, under the current system, there are acute toxicity thresholds by which materials are classified as Very Toxic (T+), Toxic (T) or Harmful (Xn). Under the GHS, there will be more sub-categories of acute toxicity (numbered Category 1 to Category 4). In addition, the thresholds for determining which Category applies will be changed in some cases. How these two systems match up varies depending on whether the material is classed as acutely toxic by inhalation, skin contact or if swallowed, and (for materials classed as inhalation hazards) also on the physical form of the material (gas, vapour or dust/mist). However, in broad terms, the reclassification will result in the following changes to the classifications of these materials.

<b>Current Classification</b>	<b>Classification under GHS</b>
T+ (Seveso)	Some will be Category 1, others Category 2
T (Seveso)	Some will be Category 2, others Category 3
Xn (non-Seveso)	Some will be Category 3, others Category 4

This means that any changes made to Schedule 1 of the Seveso Regulations (or to Annex I of the Seveso Directive) will need to be carefully considered if a situation is to be avoided whereby the Seveso status of various sites will change under the revised Regulations. For example, if Category 3 acute toxicity is included as one of the criteria for qualifying as a Seveso substance, then this will mean that some materials currently classed as Xn (and so do not currently qualify as Seveso substances) would come under the revised Seveso Regulations. This could potentially lead to a situation whereby some Lower Tier sites would become Top Tier sites, or where additional sites would be brought under the Regulations.

However, if Category 3 acute toxicity is not included as a criterion for qualifying under Seveso, then this will mean that some materials currently classed as T (which do qualify as Seveso substances) would no longer come under the revised Seveso Regulations. This could potentially lead to a situation whereby some Top Tier sites would become Lower Tier sites, or where the Regulations would no longer apply to some activities.



Finally, we welcome the fact that the Regulations formally set out the various circumstances under which a planning authority should consult with the HSA in relation to Land Use Planning matters. It is essential to ensure that there are good channels of communication between the planning authorities and the HSA so that the risks associated with any proposed development which falls within the Consultation Distance of a Seveso installation are assessed at an early stage in the process.

Yours faithfully

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Thomas Leonard, Chartered Engineer