

## Chapter 6 - Guidance on the application of regulation 18 - prohibition under COMAH

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### Introduction

1. This regulation includes the provision to prohibit operations under certain conditions and for the purposes of this guidance, the term “prohibition” is the issuing of a COMAH Prohibition Notice (CPN) under Regulation 18 unless otherwise stated as being a prohibition (PN-HSW) issued under the Health and Safety at Work etc Act 1974 (HSW) or a prohibition (PN-EP) issued under Environmental legislation. The differing requirements for serving a CPN and a PN-HSW are covered in more detail in **Annex 3** (for HSE inspectors).
2. Issuing a CPN is likely to be a rare event but the process of identification and decision making should be such that where serious deficiency is apparent then prohibition is an action that must be taken.
3. This guidance is designed for all inspectors in the Competent Authority (CA), including inspectors from HSE, the EA and SEPA who have been consulted in its preparation.

### Issuing Authority

4. The CA is required to take action under this Regulation. The CA is HSE and EA acting jointly in England and Wales and HSE and SEPA in Scotland but each authority can issue a CPN on their own because of delegated powers to each according to the Memorandum of Understanding (MoU) and the CA Enforcement Policy.
5. In practice, however, the MoU and the CA Enforcement Policy require consultation between HSE and EA/SEPA before taking legal action and when COMAH enforcement action is to be taken.
6. CPNs should not normally be issued without prior consultation with the other authority. This will inevitably introduce an administrative process between identifying the concern and the notice being issued (see Para 31).
7. This requirement does not necessarily mean that the issue of the notice will be significantly delayed as in urgent cases consultation may be by telephone, fax or email rather than waiting for a formal meeting (see Para 31). Furthermore, if the other party is not contactable or available for discussion and if the problem is an acute one, needing urgent action to ensure the safety of employees, the public or to protect the environment, it is acceptable for either party to act alone. However, action should normally only be taken after consultation with senior management within the issuing authority (see Para 31). Once a decision has been taken to issue a CPN the organisation issuing it will follow its own internal procedures.
8. Consultation requirements only apply to major accident issues, thus ensuring the continuing independent approaches to COMAH establishments regarding other conventional health and safety or environmental issues. There is considerable overlap between operators’ COMAH duties and other duties; therefore additional guidance is given here on finding a way through the options.
9. If in doubt, inspectors should err on the side of greater consultation and information exchange to ensure that the CA is acting consistently.

### Consideration of Regulation 18(1)

#### The compulsory requirement to prohibit

10. This refers to the prohibition of activities where the measures taken by the operator for the prevention and mitigation of major accidents are seriously deficient. It includes the term, "*shall prohibit*" and, provided the conditions described are met then the CA has no choice but to prohibit operation or bringing into operation. This means that if there is evidence of a serious deficiency, the CA must serve a CPN under Reg 18(1) of COMAH and under no circumstances serve a PN-EP or a PN-HSW as an alternative action even if they may refer to COMAH (e.g a PN-HSW or a PN-EP referring to COMAH Reg 4 should not be served).
11. It is therefore essential to clearly understand what "*seriously deficient*" means and how to evaluate it in practice. Discretion is limited to matching the circumstances to the requirements of Regulation 18(1) and not in the choice of action.

#### What is meant by "Operation"?

12. Prohibition is of the operation or part of the operation of an establishment or installation. For a complex installation, only a part of the operation, a process or a small part of the installation might be of concern and therefore the CPN can be directed at that part alone.
13. Although the term "*operation*" is coupled with "*establishment*" and "*installation*", it is not restricted to the production process but should be interpreted widely to include ancillary actions directly related to the conduct of a part of the undertaking giving rise to the major hazard.

#### Measures taken for the prevention and mitigation of major accidents

14. Regulation 18 uses the term "*measures taken.*", meaning that the arrangements, controls or systems in place as a whole need to be seriously deficient before aCPN can be issued. Absence or deficiencies in a single measure may not constitute a serious deficiency since most major hazard protection systems have several lines of defence, which must all be breached for an accident to occur. Similarly, although a number of individual deficiencies in a particular measure is a strong indicator of concerns, it is not in itself the test for prohibition. It is not the test of any individual measure that leads to prohibition, but an assessment that the overall measures for preventing and mitigating accidents are seriously deficient.
15. The regulations only apply to the control of major accidents and therefore COMAH prohibition cannot be applied to conventional issues such as occupational health, personal safety or environmental issues when they are not associated with a major accident. A "*major accident*" is defined by Reg 2(1) of COMAH as "*an occurrence (including in particular, a major emission, fire or explosion) resulting from uncontrolled developments in the course of the operation of any establishment and leading to serious danger to human health or the environment, immediate or delayed, inside or outside the establishment, and involving one or more dangerous substances*".

### “Seriously deficient”

16. Professional judgement must be used to establish whether the measures are not just deficient but seriously so. An initial test might be to ask the question whether conditions of any part of the operation are such that if a major accident is reasonably foreseeable or that if one should occur, mitigation is foreseeably inadequate such that it will not adequately mitigate against the effects of a major accident. Whilst this test may prove a link between deficiency of measures and potential/actual consequences, the concept of reasonable foreseeability is not used in COMAH. So, whilst inspectors will be familiar with these terms they should not be used as the sole justification when deciding whether to prohibit under a CPN.
17. Investigation of a major accident resulting in plant or processes being shut down can present an inspector with the need to make an urgent decision on the issue of a CPN. Principles outlined in this guidance apply if the incident was a major accident or could have reasonably developed into one. If the operator has not taken remedial measures to prevent a recurrence then it strongly suggests that the measures taken are “seriously deficient”. (The actual set of circumstances and the incident provide the evidence required to support this.)
18. The operator may voluntarily refrain from recommencing the operation until measures have been taken.. The cessation of operations is not a factor to take into account when deciding whether to issue the prohibition. If inspectors are of the opinion and have evidence that there is a serious deficiency in the measures taken, then they are under a legal duty to issue a CPN, irrespective of whether operations have been voluntarily ceased. (See para 10).
19. Operators may argue that the issue of a notice is unnecessary in these circumstances, as they will voluntarily not recommence the operation until the inspector is satisfied with the action taken. In order to resolve any issues of apparent mistrust, the inspector should point out the lack of discretion under Reg 18.
20. Identification of a potential serious deficiency may arise from a variety of situations, including planned inspection, investigation of accidents, dangerous occurrences or complaints, or from safety report assessment.
21. Any concerns about serious deficiency arising from safety report assessment should be highlighted and immediate arrangements made for urgent site intervention and verification to ensure that the report is an accurate representation of activities before a CPN is considered (See Para 28) (See SRAM, Section 8 (Paras 26 – 32)).

### Consideration of Regulation 18 (2)

22. Reg 18(2) refers to the prohibition of activities where the operator has failed to submit any notification, safety report or other information within required time scales. It includes the word "may" and therefore, unlike Reg 18(1), action to be taken is a matter of discretion.
23. Where it is not possible to determine whether or not the measures taken are seriously deficient because there is an absence of information on which to make that judgement and the company is unwilling or unable to provide it, then there may be no alternative but to prohibit the operation. The CA may find the threat of prohibition is powerful and a written request for information under Reg 15(1) quoting Reg 18(2) may elicit the information required. If this fails then a CPN can be served.

### Consideration of regulation 18 (3)

24. Reg 18(3) refers to the CA serving a notice to prohibit operations, giving reasons for the prohibition, specifying the date it is to take effect, and that the notice may be withdrawn in writing. It enables the CA to satisfy the requirements of Reg 18(1) and uses the term; "shall serve on the operator a notice". HSE/EA/SEPA have agreed on a formal notice (see [Annex 1](#) - Draft Prohibition Notice).
25. The notice must specify the date when the notice takes effect. There is no explicit legal requirement to issue the notice immediately on finding deficiencies, although action should be taken quickly to prevent a major accident. The only reference to time is concerned with the "taking effect". The HSE, EA or SEPA Inspector should take the necessary time to prepare evidence in support of the Notice (See [Annex 2](#)), issue it once completed and require the cessation of operations when appropriate. This process should not however, cause delay in taking action, bearing in mind the need to prevent a major accident.
26. Shutting down plant or processes may in itself present a risk and any consequences of issuing a CPN must be considered. If necessary, inspectors should discuss matters with the operator to ensure that any repercussions are taken into account. Where it is unsafe to immediately shut down plant or processes, considerations may include deferring the date when the notice takes effect.
27. Identification of seriously deficient measures requires either resolution or prohibition without undue delay and HSE/EA/SEPA will treat consultation and administration of this process as a matter of urgency and high priority. Such consultation should include multidisciplinary specialist input where necessary.

**Action by CA on Identifying a Deficiency**

28. As soon as the CA identifies a deficiency which may amount to a serious deficiency leading to prohibition, the inspector must inform the duty holder of this opinion. It should be confirmed in writing. This enables the duty holder to investigate the concern themselves and either demonstrate safe operation or provide a remedy as soon as possible. An example of this approach is the procedure to be followed when identifying a “suspect” serious deficiency during the assessment of a safety report. (See SRAM, Section 8, Paras 26-32).
29. The CA must decide whether failings, inadequacies, or deficiencies amount to a serious deficiency in the measures taken to prevent a major accident. This must be confirmed by inspection with necessary staff to be able to judge the seriousness of problems identified. It is likely that inspectors will need to check management systems and competencies as well as any technical issues involved. A multi disciplinary specialist or team approach may be necessary.
30. The acting authority within the CA will in all cases, whether issues are safety or environmentally related or not, consult the other joint authorities (HSE, EA, SEPA as appropriate) about concerns as they arise, so that their views can be taken into account when deciding to issue a CPN (See paras 4-9).
31. Issuing a CPN is a matter of public concern and will have a major impact on a duty holder both directly and through publicity. Therefore, decisions to issue a CPN should normally be agreed jointly (HSE and EA/SEPA) at Band 2 level in HSE, by a Team Leader in EA, by a Level 1, 2 or 3 Officer in SEPA, and authorised at Band 1 level in HSE. There may be rare exceptions to this when immediate safety of persons or risk to the environment and the non-availability of staff mean that action must be taken without this level of consultation or authority (excepting SEPA inspectors). In this situation, HSE inspectors should endeavor to agree the action with a Band 2 Line Manager, EA Pollution Prevention and Control Inspectors may act independently. In Scotland SEPA inspectors must get approval from RRT (using the procedure for urgent approval if necessary). An aide memoire has been provided (See [Annex 2](#)) to help inspectors in collecting information needed to make a decision on prohibition.
32. Normal enforcement procedures require the CA to review evidence including the duty holder's response to the concern. If there is agreement between HSE and EA/SEPA that prohibition is the right option, then consideration will have to be given to the timing of prohibition. Problems arising from immediate prohibition could outweigh the need for quick action and implications of the action proposed need to be included in the review.

### Consideration of CPNs and/or Enforcement under other Legislation

33. Many COMAH establishments are also subject to environmental permitting (e.g. PPC), and all are subject to the general requirements of HSW Act. HSE inspectors can issue Improvement Notices (IN) or Prohibition Notices (PN) under the HSW Act and EA/SEPA can issue the equivalent under environmental legislation for issues that are either related or unrelated to major accident risks and which may refer to COMAH.
34. There are therefore potential overlaps between the issue of a COMAH notice and other notices. Inspectors will sometimes need to make decisions as to which course of action is required or most appropriate in the given circumstances.
35. The first question to ask is whether the matter of concern is such that there is a “serious deficiency” (see paragraphs 14-17). The second question to ask is whether the serious deficiency is clearly linked to the measures taken for preventing or mitigating major accidents. Where there is evidence of a serious deficiency and it is clearly linked to those measures, then the CA is legally obliged to serve a CPN under COMAH Reg 18 COMAH. In such circumstances, a PN-EP or a PN-HSW should not be served as an alternative action even if they refer to COMAH (e.g. PN-HSW or a PN-EP referring to COMAH Reg 4 should not be served). (See paragraphs 14-17).
36. Examples of situations which might indicate that there is a serious deficiency warranting prohibition are included in L111: A Guide to the COMAH Regulations 1999 (as amended) (Para 358).
37. If there is no serious deficiency with no clear link to the measures taken for preventing or mitigating major accidents, then no matter how serious the circumstances, a CPN cannot be used (NB. the failure of a single barrier or the presence of a single deficiency however serious, are not sufficient for a CPN to be used). The inspector will then need to decide whether to take other enforcement action under COMAH or other legislative powers (e.g. COMAH Improvement Notice, PN-HSW, PN-EA).
38. Guidance for HSE Inspectors when deciding whether to serve a CPN or PN-HSW is included in **Annex 3**.
39. In all cases when considering serving notices, due consideration should be given as appropriate towards the requirements of the relevant HSE, EA and SEPA enforcement policies, the Enforcement Management Model (EMM & EMM-C) and the CA Enforcement Policy.

### Drafting the CPN

40. A CPN template is provided in **Annex 1**. The notice should briefly identify deficiencies in the measures taken and link this to the major accident that may result. A fuller explanation for prohibition should be made in writing to the operator if not already included in the notice and should state any contraventions that may occur if the operation were continued (see Para 45). HSE/EA/SEPA have agreed a letter template in **Annex 4**.
41. The Notice template includes the alternative of either issuing the notice for serious deficiencies (Reg 18(1)) or for failure to submit information (Reg 18(2)). The irrelevant phrase should be deleted, crossed out and initialed, or removed electronically.

### Use of a Schedule

42. Reg 18(4) advises that a CPN may specify measures, which if taken, would cause the CA to withdraw the notice (see para 49). These measures should be specified in a Schedule and should always be provided with the notice. It should set out, clearly and unambiguously, measures to be taken before the notice can be withdrawn. It may include specific matters of detail but can also include more general requirements relating to management systems.
43. When drafting a Schedule, Inspectors must take into account the principles (proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how the regulator operates and what those regulated may expect; and accountability for the regulator's actions) as set out in the relevant HSE, EA and SEPA enforcement policies, the Enforcement Management Model (EMM-C) and the CA Enforcement Policy.

### Service of CPN

44. A CPN should be served either by hand or by registered mail using the same procedures and safeguards as when serving a PN-HSW or PN-EP. It should be accompanied by a Schedule (see para 41) and a covering letter explaining any background, previous discussions or inspections, information on the right to appeal and the arrangements for withdrawal of the CPN on compliance. An example letter is provided in [Annex 4](#) - Template CPN Service Letter.

### Withdrawal of CPN

45. Reg 18(3) states that a CPN may be withdrawn in writing by the CA and Reg 18(4) allows for the CPN to specify measures that, if taken, would cause the CA to withdraw the notice.
46. There is no express requirement in the COMAH Regulations for the CA to withdraw the CPN before operations re-commence. However, the requirement is implicit in Reg 18(1) as it places an absolute duty on the CA to "prohibit the operation...of any establishment or installation where the measures taken by the operator for the prevention and mitigation of major accidents are seriously deficient". This duty, of which the CA has no discretion, is continuing throughout the time that there remains a serious deficiency in the measures taken by the operator.
47. The CA may choose to withdraw a CPN on the basis that it has been complied with (i.e. that the measures specified in the Schedule have been taken or that the measures taken are equally effective to those specified in the Schedule). However, before withdrawing the notice and before recommencing the operation, the CA is required to review and judge the adequacy of measures taken to remedy the serious deficiencies (see para 15).

### Reviewing Measures Taken

48. In judging the adequacy of the measures taken in response to the CPN it will be necessary to review the action taken by the operator and its effect in order to reach a conclusion. Compliance should be verified preferably by a further site inspection. Except in the most straightforward cases, a statement by the duty holder that sufficient measures have been taken will not be enough without a site visit and verification.
49. When the inspector acting for the CA is satisfied that the measures taken are adequate they should inform the duty holder verbally and confirm in writing. Operations may be recommenced on the basis of verbal advice but written confirmation should be provided in every case confirming that the notice has been withdrawn and that the measures taken were adequate. See **Annex 5** - Template withdrawal letter.

### Disputes

50. If an operator recommences the process before the CA is satisfied that the measures taken comply with the CPN, the CA should inform the company that this is a breach of the Notice and of the consequences. If the operation continues, the CA should begin to collect evidence to support a prosecution for failure to comply with a CPN.
51. Operators may argue that in satisfying all the conditions of the CPN, the serious deficiencies are remedied and this therefore no longer triggers Reg 18(1). However, to provide the CA with the certainty that there is no longer a serious deficiency in measures taken, the CA must judge the success of the remedial measures taken by the operator before withdrawing the CPN and allowing operations to resume. Please note the conditions listed in the CPN should only be those that will remedy the serious deficiencies. Other deficiencies can be brought to the operator's attention when the CPN is issued, either verbally, in writing or by COMAH Improvement Notice, or by other HSW or environmental legislation enforcement, if not related to a major accident hazard.
52. Where an operator and the CA dispute the validity of the measures taken to comply with the CPN, the CA should seek agreement through formal discussions and confirm in writing what measures should be taken to achieve compliance. Where agreement cannot be reached, the company has the option of appealing to an Employment Tribunal and the CA has the option to collect evidence to support a prosecution for failure to comply with a CPN.
53. When collecting evidence to support a prosecution for failure to comply with a CPN, Inspectors should refer to the CA Enforcement Policy and their respective agency (HSE/EA/SEPA enforcement policies and procedures).

### Annex 1 - Draft Prohibition Notice



#### The Competent Authority

*The Control of Major Accident Hazards Regulations 1999 (as amended), Regulations 18 and 20.*

Serial Number:  
CPN:

#### Prohibition Notice

To **Name:**

**Address:**

being the operator within the meaning of the Control of Major Accident Hazards Regulations 1999 (as amended) of the following *establishment/installation/ part of an establishment/installation*.\*

[Description and address].

The Competent Authority for the purposes of the above mentioned Regulations hereby prohibits pursuant to Regulation 18(1)/18(2) of those Regulations the [*operation/bringing into operation*\*] of the above mentioned [*establishment/installation/part of establishment/installation*\*] for the reasons that:

- the measures taken by you for the prevention and mitigation of major accidents are seriously deficient in that [specify]:
- you have failed to submit the following [*notification/safety report/other information*\*] required by or under the above mentioned Regulations within the time so required [specify]:

The prohibition referred to above shall come into effect on [specify].

*This notice will be withdrawn by written confirmation from the Competent Authority once it has verified that the measures specified in the Schedule to the Notice have been taken or other equally effective measures taken.*

Signature:

HM INSPECTOR/PIR INSPECTOR

*(A person authorised by the Competent Authority to issue this notice)*

Date:

1. Failure to comply with this prohibition notice is an offence as provided by Sections 18(5) and 20(1) of the Control of Major Accident Hazards Regulations 1999 (as amended) (“the COMAH Regulations”).
2. The Competent Authority has power to withdraw this notice in writing.
3. The issue of this notice does not relieve you of any legal liability for failing to comply with any statutory provisions referred to in the notice or to perform any other statutory or common law duty resting on you.
4. You can appeal against this notice to an Employment Tribunal. Details of the method of making an appeal, a form to use (ETS19), and information about where to send it are contained in booklet URN 05/998 which will be provided by the Inspector with this Notice. Copies are also available from the Employment Tribunal Enquiry Line (Tel: 0845 795 9775).

### **Time limit for appeal**

A notice of appeal must be sent to the Employment Tribunal within 21 days from the date of service on the appellant of the notice, or notices, appealed against, or within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the notice of appeal to be presented within the period of 21 days. If posted the appeal should be sent by recorded delivery.

The entering of an appeal does not have the effect of suspending this notice. Application can be made for the suspension of this notice to the Employment Tribunal, but the notice continues in force until a tribunal otherwise directs.

An application for suspension of the notice must be in writing and must set out;

- (a) the case number of the appeal, if known, or particulars sufficient to identify it; and
- (b) the grounds on which the application is made. (It may accompany the appeal).

The rules for the hearing of an appeal are given in The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 (SI 2004 No 1861), and in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001 (SI 2001 No 1171) for England and Wales to the extent those Regulations remain in force.

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### **PUBLIC AVAILABILITY OF INFORMATION ON ALL ENFORCEMENT NOTICES**

1. The Competent Authority (CA), for its own purposes, records and monitors trends in the enforcement action it takes, and in the convictions and penalties imposed by the Courts. It is the CA's policy that this information should be brought to the public's attention. The CA also has a statutory obligation under the Environment and Safety Information Act 1988 to maintain a public register of certain notices. Details from this notice will therefore be stored on an electronic database, which is available on HSE's Website ([www.hse.gov.uk](http://www.hse.gov.uk)).

2. Information on a notice will not be entered onto the database until after the right of appeal against the notice has expired. Where a notice is withdrawn or cancelled on appeal no entry will be made. Entries will be kept on the database for a period of 5 years from the date of issue. Notices served on individuals under the age of 18 will be removed sooner.
3. Information will be withheld where, in the CA's belief, its disclosure would:
  - cause harm or prejudice; or
  - be in breach of the law.
4. Personal information is dealt with in accordance with the Data Protection Act 1998. Where disclosure of personal information would be incompatible with the Act it will not be included on the database.
5. If you are not satisfied with the information contained in the entry you have a further right to appeal to the CA in the first instance.

### **The Control of Major Accident Hazards Regulations 1999 (as amended), Regulations 18 and 20.**

**Serial Number: CPN:**

#### **Schedule**

**In order to comply with this Notice you shall carry out the following measures:**

1. Details of compliance measures.

#### **OR**

2. Take any other equally effective measures to comply with this Notice with the prior written agreement of the Competent Authority

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**This does not form part of the notice**

#### **Guidance**

- L111 *A guide to the Control of Major Accident Hazards Regulations 1999 (as amended)*  
ISBN 0 7176 6175 X

Further Information is also available at

- [www.hse.gov.uk](http://www.hse.gov.uk)
- [www.hsedirect.com](http://www.hsedirect.com)
- [www.hsebooks.com](http://www.hsebooks.com)
- [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

### **Annex 2 - Aide Memoire to Assist with Decision Making Leading to the Issue of a COMAH Prohibition Notice.**

#### **Introduction**

1. This advice is referred to in Para 31.
2. Decisions to issue a CPN are complex and usually involve a number of people and a wide range of issues. It is likely to be subject to scrutiny and it is necessary to keep full and detailed documentary information to ensure that the decision can be audited.
3. Identifying potentially seriously deficient measures may come from safety report assessment and if so, will require an inspection to check and verify conditions in the workplace. If inspection reaches the conclusion that the actual conditions do not amount to a serious deficiency then this should be recorded at the assessment outcome meeting and the issue is closed.
4. However, should a decision be made which may result in a CPN then the following list may be used to structure the decision and act as a record for future reference if required. Each case will have its own issues and the information below may not all be necessary or there may be other important considerations, however it should be used as a starting point.

#### **Information to collect and consider**

- A description of the issues causing concern.
- Identify and define how the measures taken are seriously deficient.
- Any major accident hazards arising from the serious deficiency.
- A list of evidence available or required to support the action to be taken or list of people able to supply evidence if requested.
- A list of information or documentation available or required to support action.
- A list of consultees, including any discipline specialists and HSE/EA/SEPA.
- The content and date of any information or views given to the duty holder and a record of any reply.
- Notes of any meeting held with the duty holder.
- Records of any meetings within HSE/EA/SEPA to discuss the action to be taken.

### **Annex 3 – Guidance for HSE Inspectors on Serving PN-HSWs**

A PN-HSW may be considered where there is a risk of serious personal injury that may or may not involve COMAH breaches, but should not be considered for a serious deficiency that warrants a Reg 18 CPN. For example, a PN-HSW referring to COMAH cannot be used as an alternative action to serving a justified Reg 18 CPN.

In considering a PN-HSW, the inspector will need to consider whether the circumstances are such as to support the opinion that there is a risk of serious personal injury (e.g. safe access, use of machinery, works transport, fire, explosion, toxic hazards etc.). The inspector may still refer to any identified breach(es) of COMAH (including Regulation 4) in a PN-HSW.

In all cases when considering serving notices, due consideration should be given as appropriate towards the requirements of the relevant HSE, EA and SEPA enforcement policies, the Enforcement Management Model (EMM & EMM-C) and the CA Enforcement Policy.

### Annex 4 - Template CPN Service Letter



**The Competent Authority**

Company Name Ltd,  
Address Line 1,  
Address Line 2,  
City ,  
County,  
Post Code

Date:

Reference:

COMAH Competent Authority

**INSPECTORS NAME**

Address Line 1  
Address Line 2  
Address Line 3

Tel: (Office)  
(Direct Line)

Fax:  
Inspector.email address

Principal Inspector  
PI Name

cc: (Environment Agency/SEPA/HSE)

**THIS IS WITHOUT PREJUDICE TO OTHER ENFORCEMENT ACTION THAT MAY BE TAKEN  
IN RELATION TO THESE MATTERS**

Dear Sir / Madam

**CONTROL OF MAJOR ACCIDENT HAZARDS REGULATIONS 1999 (AS AMENDED)  
(COMAH), REGULATION 18**

**RE: YOUR SITE AT NAME, ADDRESS, TOWN, POSTCODE\*.**

**1. Service of COMAH Prohibition Notice (CPN) under Regulation 18**

I am writing with regard to the findings of *safety report assessment/inspection on date\**.

*Explain the background of the safety report assessment or inspection, including any findings, previous discussions or inspections. Include details of CPN discussions. \**

A decision has been reached by the Competent Authority to serve a Prohibition Notice under Regulation 18(1)/18(2) of COMAH because the measures taken by you for the prevention and mitigation of major accidents are seriously deficient with regard to the operation/bringing into operation of *describe establishment or installation or part thereof*. I herewith enclose CPN (Ref: CPN/123456789\*).

## 2. Compliance

Compliance with the CPN may be achieved once the measures specified in the Schedule to the Notice have been taken, or other equally effective measures have been taken.

The said operations cannot be recommenced, until the Competent Authority has verified by a further site inspection, that the measures taken are adequate to remedy the serious deficiencies and confirmed in writing that the Notice has been withdrawn.

You are advised that any equally effective measures should only be taken after prior written agreement from the Competent Authority.

You are advised to give full consideration to the guidance & information contained in the following publications:

- L111 'A guide to the Control of Major Accident Hazards Regulations 1999 (as amended);
- Any other relevant guidance published by the Health & Safety Executive; &
- Any relevant national, European & international standards.

## 3. Withdrawal

Regulation 18(3) of the COMAH Regulations states that the Competent Authority may withdraw a CPN in writing. You may not recommence the said operations until formal written notification of withdrawal has been served.

The Competent Authority will withdraw this CPN in writing once it has been complied with (i.e. the measures specified in the enclosed Schedule have been taken or the measures taken are equally effective to those specified in the enclosed Schedule).

Should you recommence operation before receiving written notification that the CPN has been withdrawn, it will be considered a breach of the Notice and evidence will be collected with a view to legal proceedings.

## 4. Appeals

You have the right of appeal against the Notice to an Employment Tribunal. An appeal form with explanatory notes (ETS19) is enclosed. Appeals should be made within 21 days of receipt of the Notice. Please note that a CPN remains in force pending an appeal decision.

## 5. Failure to Comply

Failure to comply with a CPN is an offence under section 33(1)(c) of the Health and Safety at Work etc Act 1974 and renders the offender liable on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding £20,000 or both, or on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both.

Further information on enforcement notices is enclosed which, explains your rights and the penalties for failure to comply with the Notice in more detail. You should read this and contact me if you require any clarification or advice.

## 6. Disclosure

The Code of Practice on Access to Government Information applies to this Notice and the Competent Authority may have to disclose information about it in response to enquiries. If the Notice contains information which you think is commercially confidential or affects matters of national security, please give written notice of this to the Competent Authority within 14 days so that consideration can be given towards what information may be disclosed. I will consult you in reaching a decision and will taken account of your views. Details of the notice will also be posted on the HSE website.

## 7. Information for Employees

In accordance with obligations placed on HSE by Section 28(8) of the Health and Safety at Work etc. Act 1974 to assist in keeping employees adequately informed about matters affecting their health and safety, I enclose a copy of this letter & Notice for you to bring to the attention of your employees.

A copy of this correspondence has been sent to *name of person\** at *site address\** for information.

Should you require further information or wish to discuss any of these issue further, please do not hesitate to contact me on *telephone number*.

Yours faithfully,

**Inspector Name**  
**HM INSPECTOR OF HEALTH & SAFETY/PIR INSPECTOR**

**\* amend or delete as appropriate**

### Annex 5 - Template Withdrawal Letter



**The Competent Authority**

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Company Name Ltd,  
Address Line 1,  
Address Line 2,  
City ,  
County,  
Post Code

Date:

Reference:

COMAH Competent Authority

**INSPECTORS NAME**

Address Line 1  
Address Line 2  
Address Line 3

Tel: (Office)  
(Direct Line)

Fax:  
Inspector.email address

Principal Inspector  
PI Name

cc: (Environment Agency, SEPA or HSE)

**THIS IS WITHOUT PREJUDICE TO OTHER ENFORCEMENT ACTION THAT MAY BE TAKEN  
IN RELATION TO THESE MATTERS**

Dear Sir / Madam

**CONTROL OF MAJOR ACCIDENT HAZARDS REGULATIONS 1999 AS AMENDED  
REGULATION 18**

**RE: COMAH Prohibition Notice (CPN) Serial No 12345678**

**1. Notice Background**

I refer to the above Notice served on *date month year\** which took effect on *date month year\** that prohibits *details of CPN\**. The measures required to comply were specified in the Schedule attached to the Notice and the accompanying letter, dated *date month year\**.

Following the service of the Notice, you have made further safety demonstrations in writing and verbally (*detail said demonstrations if necessary*) and a Competent Authority *inspection of your site/assessment of these demonstrations\** was carried out on *date month year\**.

## 2. Notice Withdrawal

The Competent Authority is now satisfied that the actions taken by *company name\** to prevent and/or mitigate against major accidents have met the requirement of the Notice and Schedule, in relation to *plant or operation\**. **I hereby formally withdraw the above Notice, with regard to the said establishment or installation\*.**

## 3. Information for Employees

In accordance with obligations placed on HSE by Section 28(8) of the Health and Safety at Work etc. Act 1974 to assist in keeping employees adequately informed about matters affecting their health and safety, I enclose a copy of this letter for you to bring to the attention of your employees.

A copy of this letter has been sent to the *site address\** at *site address\** for information.

Should you require further information or wish to discuss these matters further, please do not hesitate to contact me on *telephone number*.

Yours faithfully,

**Inspector Name**  
**HM INSPECTOR OF HEALTH & SAFETY/PIR INSPECTOR**

**\* amend or delete as appropriate**

◆ From Inspection. Assessment. Investigation

