

Understanding COMAH

COMAH Intervention Manager - User Manual

the Competent Authority



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Objective

1 This manual outlines for both the COMAH (Control of Major Accident Hazards) Competent Authority (CA) and COMAH Operators, the arrangements for the introduction and role of COMAH Intervention Managers. Guidance is provided on how the COMAH Intervention Manager (CIM) and COMAH Operators can work together to ensure risks are managed appropriately. It complements current CA work instructions and guidance on the delivery of inspection and assessment.

Introduction

2 The CA and COMAH Operators have a shared interest in making sure regulatory responsibilities are delivered in the most efficient and effective way.

3 For the CA this means targeting appropriate resources to:

- a) ensure that Major Accident Hazard (MAH) risks are properly controlled;
- b) ensure they remain compliant with the law, and
- c) tackle issues of poor performance.

4 COMAH Operators can assist the CA to ensure that its interventions focus on the right areas and are based on an accurate and shared view of the establishment's arrangements to control risk.

5 This guidance also aims to assist the Intervention Manager to avoid unnecessary duplication and overlap between health, safety and environmental regulatory regimes.

6 For the environmental agencies the principles for the regulation of non-COMAH Environmental Permitting (EPR or PPCR) issues are that relevant operations also:

- a) take all the appropriate preventative measures against pollution and cause no significant pollution;
- b) avoid the production of waste and where it is produced or recovered, it is disposed of while avoiding or reducing any impact on the environment;
- c) use energy efficiently;
- d) take the necessary measures to prevent accidents and limit their consequences;
- e) on ceasing activities, take the necessary measures to avoid any pollution risk and to return the establishment of the installation or mobile plant to a satisfactory state.

7 The Competent Authority will identify EPR or PPCR outcomes and issues that are COMAH relevant. They will be those related to either:

- a) a measure necessary to prevent major accidents or limit their consequences to persons and the environment (such as a measure necessary under COMAH Regulation 4); or,
- b) any other duty placed on the COMAH Operator by the COMAH Regulations.

Roles and Responsibilities of the COMAH Intervention Manager

8 It is important to understand that in many cases the roles and responsibilities of the Intervention Manager as outlined already exist and it is this good practice and effective working relationship that is captured below. It is not the intention of the role of Intervention Manager or this guidance to replace existing duties or current good practice.

9 In addition to their existing regulatory duties, the COMAH Intervention Manager will:

- a) lead on development of the COMAH Intervention Plan;
- b) coordinate and maintain an oversight of the CA's COMAH intervention activity;
- c) act as a single point of contact for COMAH Operators;
- d) ensure that the identified activities in the COMAH Intervention Plan reflect the establishment's risk profile and duty holder's performance in controlling major hazard risks;
- e) ensure the effective development, delivery and implementation of the COMAH Intervention Plan ;
- f) work with CA partners to reduce unnecessary overlap and duplication between the COMAH Intervention Plan and the Environmental Compliance Assessment Plan (CAP) in England and Wales and between the COMAH Intervention Plan and Site Regulatory Strategy (SRS) in Scotland;
- g) coordinate any COMAH inspection work in relation to safety and the environment;
- h) maintain awareness on the timing of important inspection activities set out in the COMAH Intervention Plan and CAP/SRS where appropriate;
- i) inform relevant CA partners of any incidents or significant events at the establishment;
- j) clarify any requirements or expectations from the CA Partners or the COMAH Operator;
- k) co-ordinate and communicate any changes to the priorities or timescales within the COMAH Intervention Plan ;
- l) wherever possible, resolve any disputes that may arise between the COMAH Operator and CA partners (Refer to Section 8).

How the CA will Engage with COMAH Operators

10 Every establishment will have a COMAH Intervention Plan from the CA and, if relevant, a CAP from the Environment Agency (EA) / Natural Resources Wales (NRW) or SRS from Scottish Environment Protection Agency (SEPA). These detail planned activities over a defined period (typically two years for the COMAH Intervention Plan and SRS and one year for the CAP).

11 COMAH establishments are inspected in accordance to the risks they present to people and the environment. In some instances, the risks to the environment may be relatively very low compared to that for safety and vice versa, these factors are used to determine which CA Inspector will undertake the role of Intervention Manager at an establishment.

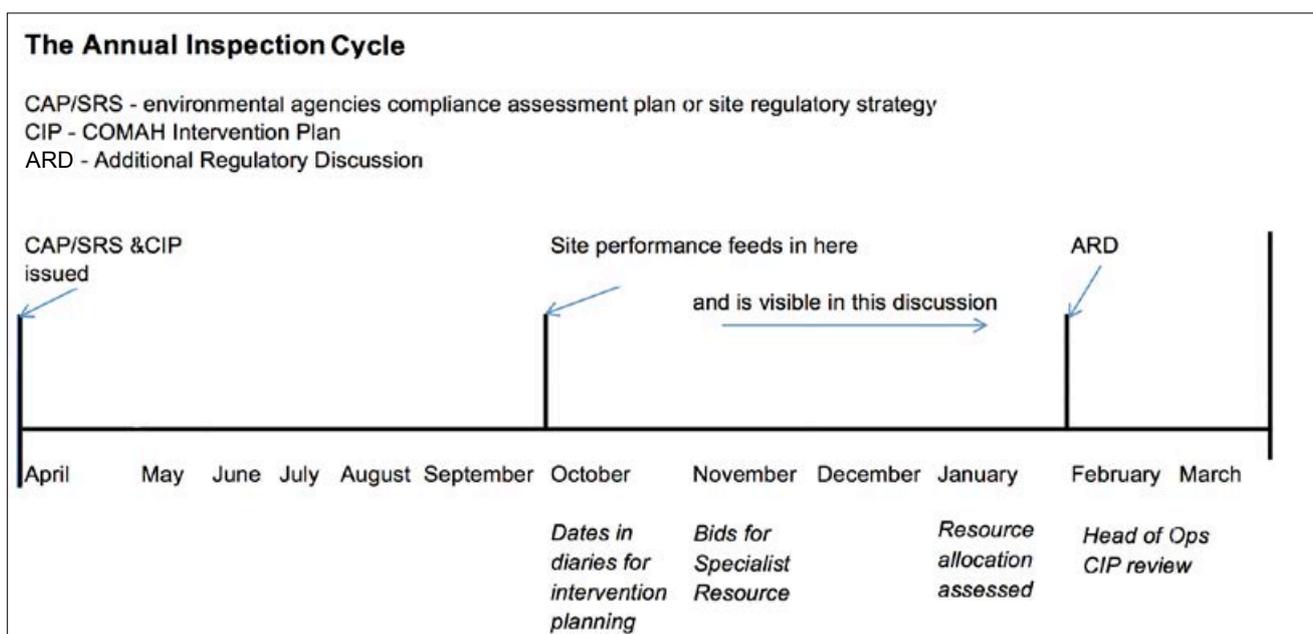
12 The CA may consider it more efficient to develop a COMAH Intervention Plan that will be delivered by only one of the CA partners. This may include instances where the risk to the environment presented by an establishment is relatively very low in comparison to that for safety or vice versa i.e. where there is currently no potential for a Major Accident to the Environment (MATTE) to occur or the safety risk is well managed on a site with low inherent hazard.

13 The criteria for the CA to consider single regulatory partner inspections at an establishment are:

- a) hazard groupings of C or D for both safety and environmental aspects i.e. DD, DC, CD or CC; and
- b) no significant performance issues as set out in the performance and recognition framework.

14 Depending on priorities a COMAH Intervention Plan may not contain planned inspections for one or both CA partners for a particular operational year. It should be noted that regulatory oversight may be maintained through other applicable health, safety or environmental legislation.

15 Timeline for development and communication of planned regulatory activity:



Developing and Managing the COMAH Intervention Plan

16 Guidance on the development of COMAH Intervention Plans is provided by the CA instruction: Reviewing COMAH Intervention Plans 2015-16 which can be found at www.hse.gov.uk/foi/internalops/og/og-00039.htm.

17 The COMAH Intervention Plan sets out what the CA will inspect at each establishment over a two-year rolling period. Its main purpose is to inform operators how the CA will examine and test the arrangements for controlling major accident risks and when the CA intends to do this. Interventions may include:

- a) Safety Report (SR) assessment – this will be predominantly desk based, with some time spent at the establishment;
- b) inspections on identified topics;
- c) where applicable, inspections aimed at rating the operator's performance against key strategic national topics;
- d) ongoing investigation actions;
- e) work to follow-up and close out issues of non-compliance identified from previous interventions.

18 The COMAH Intervention Plan will include any agreed in-year meetings between the COMAH Operator and the Intervention Manager to discuss progress against the plan.

19 The Intervention Manager will lead on the development of the COMAH Intervention Plan. Starting in October each year, they should:

- a) review progress against the current year's plan and determine if any activities will need to be transferred to the plan for the coming year, including any outstanding interventions;
- b) review the establishment's hazard profile using the CA Inherent Hazard Methodology to reflect any changes at the establishment since the last plan review;
- c) review the Operator's performance, taking into account any performance assessments generated from the current year's plan;
- d) assess whether it is more efficient to develop a COMAH Intervention Plan that will be delivered by only one of the CA partners
- e) for establishments regulated under the Environmental Permitting Regulations in England and Wales, or Pollution Prevention and Control Regulations in Scotland, review and where possible reduce any unnecessary overlap or duplication on COMAH topics between the two types of plan. This may require co-ordination by the Intervention Manager and other inspectors acting as a review team to complete this work.

20 The Intervention Manager should work with the HSE and environmental agencies to complete this review. It is the responsibility of the environmental agencies to develop the CAP/SRS and as such the COMAH Intervention Manager should identify the Lead Inspector from the environmental agency responsible for these. Where environment inspections have COMAH relevancy they should be highlighted.

Internal CA Intervention Plan Review Meeting

21 Depending on the complexity of the COMAH Intervention Plan and the CA's previous engagement, the Intervention Manager may need to organise a more detailed review of the plan involving all relevant CA partners.

22 The review should also ensure that proposed interventions align with resourcing priorities outlined in *Reviewing COMAH Intervention Plans 2015-16*. Specialist Inspectors may also identify potential third party information relevant to an inspection.

23 An essential part of the review team's work is to coordinate all activities in the COMAH Intervention Plan, ensuring that COMAH regulation is efficient and transparent. At this point the CA should also agree its arrangements for ongoing communication between the Intervention Manager and other CA partners over the period covered by the COMAH Intervention Plan. It will also be important to ensure the review team is sighted on any arrangements to meet with the COMAH Operator to discuss the COMAH Intervention Plan prior to issue.

Option for COMAH Operators to discuss the draft COMAH Intervention Plan

24 The Intervention Manager should contact the COMAH Operator and offer to discuss the proposed COMAH Intervention Plan. The CIM and COMAH Operator should agree in advance on the appropriate format for the engagement. The COMAH Operator should be advised that the time spent will be cost recoverable.

25 The purpose of discussing the COMAH Intervention Plan with the COMAH Operator should include:

- a) clarifying the priority and focus of the plan;
- b) explaining what the CA intends to do in the coming year;
- c) explaining how the COMAH Operator's performance has influenced the COMAH Intervention Plan ;
- d) discussing how the plan may need to be revised due to any on-site activities that may compromise effective delivery of the plan, for example major works;
- e) discuss what performance information from third parties or otherwise the COMAH Operator can provide that is directly relevant to the planned interventions for the coming year; (see CA Performance and Recognition Framework);
- f) discuss and agree the timing of any in-year engagement to review progress against the plan.

26 Following the discussion, the Intervention Manager should make a formal note of any agreements or amendments and revise the plan accordingly.

27 The revised COMAH Intervention Plan should be shared with all CA partners and the COMAH Operator to ensure that it reflects the agreed outcome from the discussion.

28 The Intervention Manager should discuss the draft COMAH Intervention Plan in line with the planning schedule described in *Reviewing COMAH Intervention Plans 2015-16*.

Using the Performance and Recognition Framework

29 The framework is available at: (www.hse.gov.uk/comah/ca-guides.htm)

30 The Intervention Manager should use the framework when considering the initial intervention priorities and to support discussions on the draft plan with the COMAH Operator. The framework describes how COMAH Operator's performance (using both the performance information that the CA holds and that provided by the COMAH Operator) can influence planned regulatory activities at the site. It is unlikely that decisions based solely on the framework will lead to a cancellation of a planned intervention.

31 Where it can be demonstrated that the COMAH Operator has improved its performance in managing risk, this should be taken into account when reviewing current interventions and how these will be delivered over the period of the COMAH Intervention Plan. The aim is to ensure that interventions are proportionate to the risk.

Delivering Inspections and Managing Change

32 The Intervention Manager should oversee the delivery of the COMAH Intervention Plan and remain sighted on:

- a) timing of regulatory activities identified on the COMAH Intervention Plan
- b) understanding what the planned intervention is for;
- c) understanding the result of the intervention;
- d) understanding the required follow-up actions by the COMAH Operator and CA, and the timescales that apply;
- e) any disputed, unexpected or inconsistent outcomes, and be prepared to discuss or challenge where necessary

33 Successful inspection will depend on proactive communications between the Intervention Manager, the COMAH Operator and other CA Inspectors and Specialists.

34 The Intervention Manager should be the single point of contact for any issues, actions, investigations, audits or inspections relevant to the COMAH Intervention Plan. This means that CA Inspectors and environmental agencies, should feedback COMAH related issues to the Intervention Manager.

35 The CIM should maintain a dialogue with other CA partners delivering the CAP/ SRS to ensure that relevant issues that may affect these plans are discussed.

36 Unforeseen events arising in year, may mean that aspects of COMAH Intervention Plan should be amended, for example:

- a) *If CA resource is not available to undertake a planned inspection*
In this instance the Intervention Manager should first discuss this with CA partners and Line Managers. If it is agreed that there is no other option than to defer the planned inspection, the COMAH Operator should be contacted to discuss an alternative solution.
- b) *Where the COMAH Operator has requested a change to the COMAH Intervention Plan*
In this instance the Intervention Manager will discuss this with CA partners and Line Managers. The CA will take a pragmatic view and where possible take account of the Operator's difficulties in engaging with the inspection. However, the importance of the intervention, or CA alignment of resources may be such that deferring the inspection is not possible.

37 In all cases, the Intervention Manager must alert all relevant parties to any adjustments to planned COMAH interventions outlined in the COMAH Intervention Plan.

Record Keeping

38 Records for COMAH related matters should be updated onto HSE's COIN system. The Intervention Manager must have access to COIN either directly or through allocated HSE admin team members. As a minimum the COMAH Intervention Plan and associated covering letter should be saved on COIN.

39 EA/ NRW/ SEPA compliance assessment reports do not need to be saved on COIN in addition to the appropriate agencies' own systems, e.g. Environment Agency's NCAD, but COMAH relevant aspects should be brought to the attention of partner organisations (HSE/ ONR).

Communication

40 One of the Intervention Manager's key responsibilities is to act as a "Single Point of Contact" for the COMAH Operator on all COMAH matters. They are expected to understand the issues at hand and be able to coordinate any response, seeking additional input from other CA regulators, as required.

41 COMAH Operators should address all COMAH correspondence to their Intervention Manager or copy them into direct communications to specialist or other CA partner inspectors. COMAH Operators should consider whether they should appoint a similar single point of contact who would assist the CA's interaction with the Operator's establishment(s).

42 These arrangements will ensure consistent communication between the CA and COMAH Operator.

Communication with Multi-Site Operators

43 Where a Lead Unit is established to cover a number of COMAH sites, the existing arrangements will be maintained, with the Lead Unit acting as the overarching contact for multi-site COMAH Operators. This means that Lead Unit contacts will continue to act and therefore fulfil the responsibilities of the Intervention Manager for multi-site operators.

44 Where Lead Unit arrangements do not exist, COMAH Intervention Managers assigned to establishments operated by the same Duty Holder should maintain an active dialogue with their counterparts to ensure that they deliver a more consistent approach to COMAH regulation. This will also help to avoid unnecessary duplication of intervention activities, and ensure the CA is sharing intelligence on performance across the group of establishments (especially where these may share a common safety management system).

45 Communications between Intervention Managers during intervention planning will be key to ensuring activities are aligned to provide the CA with a better overview of risk control across all of the establishments. This approach will also ensure that the CA removes any unnecessary duplication and avoids unnecessary costs (i.e. Intervention Managers might agree to target a detailed review at one establishment and identify complimentary activities at other establishments, adopting targeted sampling in line with the HID Regulatory Model).

Communicating progress against Planned Inspections

46 The Intervention Manager and COMAH Operator should ensure that progress against the agreed plan is monitored, updated and shared.

47 COMAH Operators should advise the Intervention Manager of:

- a) any business activities that may affect the plan;
- b) any changes to agreed timings for responses, availability of personnel or provision of information.

48 The Intervention Manager should advise the COMAH Operator of:

- a) early notice of any changes in planned visits;
- b) current issues and concerns with achieving the plan;
- c) outstanding information from the COMAH Operator and CA and vice-versa;
- d) emerging or changing regulatory approaches i.e. following safety alerts, or new strategic priorities (although it is unlikely that these will appear in the current year plan).

49 The arrangements above will ensure that the plan reflects the current position on the establishment, and will improve efficiency in the CA's work during the annual review of plan.

Communicating Performance Ratings

50 Performance ratings are an important factor in determining a COMAH Operator's overall performance in controlling risk [see CA Performance and Recognition Framework]. The ratings are made against the requirements set out in the relevant COMAH CA strategic topic delivery guides and are based on corresponding evidence sampled at the time of the inspection. While CA inspectors will routinely review outcomes from previous inspections, interventions and improvement notices, the rating will reflect the performance of the establishment at the time of rating against the strategic topic taking into account any improvements following any earlier poor performance rating.

51 Any areas of perceived weakness against the requirements of the strategic topic delivery guide should be shared with the establishment at the time of the inspection (or shortly after where further consideration needs to be given to the evidence obtained). When informing the COMAH Operator about its performance rating, the CA inspection report will provide a brief outline of how the rating was determined and highlight actions required to bring about improvement. The covering letter to the report will include those matters of serious non-compliance uncovered during the inspection that require action from the COMAH Operator. Subsequent inspections on the topic will provide an opportunity for the Intervention Manager to review and update performance ratings.

52 Performance ratings are a reflection of the Inspector's assessment on compliance based on the evidence reviewed during the inspection. This also reflects that the COMAH Operator will not necessarily agree with the CA's assessment and the above offers a timely opportunity for them to input their views.

Dispute Resolution and Challenge Mechanism

Tackling issues early

53 A key responsibility of the COMAH Intervention Manager is to mediate and resolve any issues raised by COMAH Operators or other CA regulators/specialist arising from interventions at the establishment. This will involve gaining a full understanding of the issue from all relevant perspectives and working to address the issue in a constructive and balanced way. The aim is to clarify and resolve, where possible, any issues that may otherwise progress to Stage 1 of the formal challenge mechanism.

54 The Intervention Manager will be expected to facilitate discussions between the COMAH Operator and CA regulators, and work to achieve a common understanding of issues raised avoiding, wherever possible, detailed technical analysis and 'standards quoting'. The Intervention Manager should work to formulate a clear and defined analysis; the outcome from these discussions will be an agreed approach to resolve the issue. The Intervention Manager should be prepared to challenge CA regulators and the COMAH Operator as appropriate.

55 As part of this early resolution process, the Intervention Manager should document and agree (with all parties) a common understanding of the issue as this may be used to support the escalation process (see dispute resolution below)

The Challenge Mechanism

56 Full details of the mechanism that allows COMAH Operators to challenge COMAH regulatory decisions please refer to, 'Understanding COMAH: How COMAH Operators can challenge regulatory decisions made by the Competent Authority', which can be found at www.hse.gov.uk/comah/ca-guides.htm).

57 As described above, the Intervention Manager will be involved in the clarification phase which takes place prior to a challenge being formally considered via the mechanism. If a resolution cannot be reached, the COMAH Operator can then formally enter stage 1, by putting the challenge in writing via the Intervention Manager to the CA Inspector's Line Manager. In some cases, the timescales required to correct the problems identified by CA Inspectors may be adjusted to facilitate the COMAH Operator proceeding through the challenge mechanism.

Stage 1 Challenge – Quick Second Opinion Sought

58 The Line Manager of the COMAH establishment's CA inspector will review the CA inspector's regulatory decision, this will include checking:

- a) the COMAH Operator's understanding of the action;
- b) the legal basis for the action;
- c) the standards for compliance; and
- d) the evidence collected that details the COMAH Operator's non-compliance.

59 As soon as the challenge is received by the Line Manager, the Intervention Manager should provide any documentation resulting from the initial discussions held to agree a common understanding of the issue.

Stage 2 Challenge – Independent Input

60 The challenge will be reviewed by a CA Area or Operational Manager from a different region.

61 Before entering Stage 2: If the COMAH Operator is a member of a Trade Association they can contact them, or other industry bodies, to ask for advice and support. Industry bodies will use their normal network and communication routes to gather and collate information about current industry practice in the topic which is subject to challenge, and this information may be submitted for consideration by the reviewing manager.

Stage 3 Challenge – Final Stage

The HSE's Independent Regulatory Challenge Panel (IRCP) will take COMAH regulatory decision challenges and give recommendations to the CA for their consideration. The CA is not obliged to amend its regulatory decision following recommendations provided by the IRCP.

Intervention Managers - Strategic Forums and Other Initiatives

63 The CA adopts a collaborative approach to working with industry to promote the sharing of knowledge and where appropriate suggest solutions to issues or emerging concerns. To facilitate this approach, various forums exist within industry sectors, cross industry sectors and with the CA. A COMAH Intervention Manager should be aware of these groups, what their role and function is and any relevant outputs (for example guidance) which play a part in helping businesses take a consistent approach to a specific issue across industry, and help to achieve a consistent approach to its regulation. Intervention Managers are encouraged to share intelligence with these existing regulatory groups and forums.

CA / Industry Initiatives

64 There are several groups which exist to promote dialogue between industry and the CA (and unions where appropriate). Two key examples are as follows:

- a) *COMAH Strategic Forum (SF)*: Provides industry and the CA with a means for strategic discussion on how regulators and industry are working together to provide leadership and management of COMAH major accident control and mitigation across industry. For further information refer to: <http://www.hse.gov.uk/comah/bre-review/index.htm>
- b) *Chemical and Downstream Oil Industries Forum (CDOIF)*: A collaborative venture formed to agree strategic areas for joint industry / trade union / regulator action aimed at delivering health, safety and environmental improvements with cross-sector benefits. Start and finish task groups are commissioned to develop guidance where necessary, for further information refer to: <http://www.hse.gov.uk/aboutus/meetings/committees/cif/>

65 Several industry Trade Associations (TA) have their own process safety improvement strategies and in many cases this includes dedicated sector forums with the CA. It is important for the CIM to be aware of the TA with which the COMAH Operator is affiliated and to understand their involvement with it. This will also be important in providing the context for discussion with COMAH Operators on earned recognition factors which the Operator may table as evidence on how this has improved their control of major hazard risk. For further information, refer to paragraph 16 'Developing and managing the intervention plan'

66 TAs also work collaboratively across sectors, most notably through the Process Safety Forum. The forum was established to provide a platform whereby initiatives, best practice, lessons from incidents and process safety strategy can be distilled and shared across sectors; to drive the process safety management performance agenda. For further information refer to: <http://www.p-s-f.org.uk/>

New and Revised Standards

67 It is important for the Intervention Manager and COMAH Operator to be aware of new and revised standards and guidance that may be relevant to a COMAH establishment (this may include, but not be limited to, European Norms [EN], IEC and API publications). CDOIF has been tasked with maintaining a high level overview, and where appropriate will commission a review to determine the impact on industry. Conversely, should the Intervention Manager or specialist inspection teams become aware of new guidance or standards that may have an impact, this should be reported to CDOIF to allow them to take appropriate action across a sector or sectors.

Appendix 1: Dealing with duplication in CA Plans

68 If duplication has been identified then the EPR/ PPCR Inspector, COMAH Inspector and HSE will need to agree how to proceed:

regulate under COMAH (i.e. identified in Intervention Plans and CAPs/SRS);
regulate under EPR or PPCR;
regulate under both

69 For EPR, the choice of regulation will be guided by the principle that COMAH relates to the prevention and mitigation of major accidents (see Section 10 of the Offence Response Options and also OI 229_03 COMAH enforcement).

70 There could be three possible outcomes:

- a) *An issue will be regulated under COMAH*
Regulation of the issue will not occur under EPR/PPCR this year, but the environmental agency inspector needs to be sighted on the outcome of the COMAH work to inform future EPR/ PPCR work on the matter. This COMAH activity should then also be identified in the Intervention Plan for the Intervention Manager to lead on. The environmental agencies COMAH inspector will need to keep the EPR/ PPCR Inspector fully informed on this aspect.
- b) *An issue will be regulated under EPR/ PPCR*
Regulation will not occur under COMAH, but the COMAH Intervention Manager will need to be sighted on the outcome of the EPR/ PPCR work to inform future COMAH work on the matter. This only needs to be identified in CAP/SRS.
- c) *An issue will be regulated under both COMAH and EPR/ PPCR*
In such cases a discussion will be required between the Intervention Manager, environmental agency's inspector(s) or HSE Inspector as appropriate, and steps taken to minimise the regulatory burden i.e. by carrying out a joint inspection on the issue, rather than two separate visits for COMAH and EPR/PPCR. This then needs to be identified in the Intervention Plan and CAP/SRS.

71 It is anticipated, in most cases, options a and b above will provide the most efficient route and the information gathered by the Intervention Manager or environmental agencies inspector(s) will be shared with the other regulatory partners to inform future regulatory activity.

72 The Intervention Manager will be responsible for facilitating these decisions, to include discussion with COMAH Operator and subsequent monitoring of regulatory outcomes.

73 If the Intervention Manager, EA/ NRW/ SEPA inspector and the HSE Inspector cannot agree a way forward, then the Intervention Manager should take this to their Line Manager for review.

Appendix 2: Terms explained

Environmental agencies: This means SEPA, NRW and EA

Intervention Manager: This refers in all cases to the COMAH Intervention Manager

CIM: This refers in all cases to the COMAH Intervention Manager

Intervention plan: This means COMAH Intervention plan (not to be confused with the CAP or SRS plans developed by the environmental agencies)

Single point of contact: This means that the nominated Intervention Manager should act as the focal point for all communications between the CA and COMAH Operator on issues relating to COMAH.