

HSE response on 12 December 2008 to the Inquiry email of 20 November 2008

"I can now add further detail to the previous response using the original numbering.

a) In addition to the previous HSE response, it is important to correct the slight misunderstanding which appears to have arisen. The distribution list of OM1998/114 is of "RSGs/SSGs, CHID Inspectors, file 286....". CHID Inspectors were actual general field inspectors who had responsibility for chemical sites (eg manufacturing, processing etc). CHID was the forerunner of Chemical Industries in HID. It is true that general field inspectors in FOD did not get personal copies of the LPGA CoPs but they were freely available in the area libraries as we have previously mentioned. Also, if inspectors were looking for information they would have found the LPGA CoPs listed in the Alphabetical Subject Index to the library information. On investigation, a copy of the September 1998 ASI clearly lists the LPGA CoPs under LPG. If a hardcopy of this is required please let me know.

b) You asked us to "demonstrate" a robust enforcement activity in relation to LPG at non COMAH sites. You will appreciate how difficult it is to do that. My clients have spent some time searching the COIN system for information relating to enforcement and a document detailing the information found is attached. Please note the caveats contained in the opening paragraph. We believe that this refutes Mr Tyldesley's unsupported allegation of a non enforcement approach to LPG when it was required. If I am wrong in saying that Mr Tyldesley evidenced his assertion then please let me have sight of that.

Further, we note that you do not appear to accept that the existence of the EMM and EPS does not evidence the use of them in practice. Our clients have asked us to draw your attention to that which can be found on HSE's website if searched using keywords "EMM" or "EPS". There is a large range of documentation, guidance and instruction relating to the use of the EMM or enforcement activity. This does not give a full record of all the information since implementation of EPS in 1995 and I am sure you will agree that to search the hard copies would be disproportionate. The following is however very illustrative.

- OC 130/5 dated 31/7/2002. Enforcement Management Model on health risks application
- LAC 61/1 dated July 2003. HSE advice to Local Authorities on Enforcement Management Model on health risks applications
- OM 2002/116 EMM dated 29 July 2002. Discusses enforcement decisions in particular cases
- OC 360/2 dated 28 February 2000. Health & Safety information for employess regulations 1989 (para 8 which also includes reference to inspector training on EMM)

In addition to those particular points, the Health and Safety Commission Annual report 2001/2002 (on the website) refers to the EPS and EMM that inspectors enforce at page 55. FOD undertook an audit in June 2003 looking at the use and compliance with the EMM by inspectors. This was followed by a Regulatory Decision Making Audit in 2004 (See Management report dated December 2004). Lastly on this point, the EPS was revised in 2002 (as we have previously indicated) following an evaluation which went to the HSC. A broader review was undertaken by an external consultancy and published as Research Report RR519 (see HSE website).

c) We have explained previously HSE's legitimate prioritisation process (which we do not understand to have been challenged) and HSE's approach to LPG. That explanation is contained in HSE 5. The enforcement data (attached) indicates that HSE inspectors took action when needed and would have had full access to specialist advice and input on whatever site they visited if they required it. Background information and statistics have also been provided to explain the relative scale of LPG incidents and injuries with regard to other matters HSE requires to deal with. We have also indicated that inspectors would have dealt with LPG as a matter of evident concern if there were serious issues identified by them, or brought to their attention. Thus we considered the information before the Inquiry to be sufficient and did not seek to repeat it in our original response. Again, we do not think the statistical information, for example, was challenged.

d) As explained previously the LPGA CoPs were available to inspectors via the library system and certain inspectors and specialists had personal copies (or could obtain them). It is true that the HSE information systems have improved over time (in common with most organisations) with the increased use of the Intranet and Internet for inspectors - including putting the LPGA CoPs on the Intranet for inspectors' use.

Copies of all documents referred to are on the HSE website."