

## ICL PUBLIC INQUIRY

before

THE RIGHT HONOURABLE LORD GILL

### Closing Submissions on behalf of Johnston Oils Ltd (JGas)

1. At the conclusion of Phase One of the Inquiry proposed Findings in Fact and submissions regarding measures which could have prevented the tragedy of 11 May 2004 were made in writing on behalf of Johnston Oils Ltd. There is nothing which Johnston Oils would wish to add to those submissions in relation to the matters which were examined in Phase One of the Inquiry.
2. Prior to the commencement of Phase Two of the Inquiry submissions regarding proposed recommendations in the light of the lessons identified in Phase One from the causation, and circumstances leading up to the incident were made in writing on 23 September 2008 on behalf of Johnston Oils. At paragraph 2 of those submissions it was stated that "...Johnston Oils has had the opportunity to consider the most recent report of Mr Rod Sylvester-Evans, dated 09 September 2008. Johnston Oils does not disagree in principle with any of the detailed recommendations made by Mr Sylvester-Evans and is content to adopt all recommendations made as demonstrated by Mr Alan Elliott on behalf of Johnston Oils in the most recent statement provided to the Inquiry in response to a series of questions relating to issues to be considered in Phase Two of the Inquiry. In particular, it is considered essential that the recommendations made by Mr Sylvester-Evans at paragraphs 3.3.3 and 7.2.4 of his report be adopted to ensure, insofar as is reasonably practicable, compliance with the other measures which he has recommended".
3. Johnston Oils adheres to the position outlined in its earlier submissions, and commends Mr Sylvester-Evans' recommendations as providing a number of measures which, taken together, provide a coherent framework to address the weaknesses of the regime of installation, maintenance and monitoring in respect of LPG pipework which were identified in Phase One of the Inquiry.

4. In these circumstances, Johnston Oils is content to restrict its submissions at this stage to consideration of certain aspects of Mr Sylvester-Evans' report in respect of which there did not appear to be complete agreement between Core Participants, as identified by Mr Sylvester-Evans in his "Summary Note on Parties' Views of RSE Recommendations" of 07 November 2008.

5. Merits of Verification Scheme:

In response to the view expressed on behalf of Calor in evidence that a verification scheme was unnecessary if a safety dossier were introduced together with an extension of GSIUR to industrial premises, Mr Sylvester-Evans summarised the merits and purpose of a verification scheme at page 3 of his Note as "...an important means to encourage compliance by LPG users with their existing Health and Safety duties. Whilst there appears to be some merit in selective extension of the GSIUR to industrial premises to reinforce the issue of competency, it does not ensure the ongoing compliance of H & S duties where there is no change to the LPG system pipework or appliances". Johnston Oils respectfully agrees with this view. Further, the introduction of any reform to the regime for the installation and maintenance of LPG systems will necessitate the recruitment by the industry of a significant number of engineers with little practical experience of LPG systems. In these circumstances, it is essential that a verification scheme is in place to ensure the quality of any safeguards taken by, or on behalf of users. It is submitted that the frequency with which any particular safety dossier would require to be verified will in all cases be determined following initial risk assessment of each installation. Johnston Oils agrees that it would be appropriate for the UKLPG industry together with the HSE to establish appropriate systems and procedures for the appointment of Independent Competent Persons to implement any verification scheme.

6. Implementation of basic risk ranking method to prioritise the LPG user sites:

Johnston Oils agrees that the development of a risk ranking method must be a priority. However, as the Inquiry has heard, Johnston Oils has already taken robust steps to carry out surveys of all installations to which it supplies LPG and, where appropriate, to replace metallic buried pipework; a process which is likely to have been completed by 2009. Whilst it is accepted that it is entirely appropriate that a risk ranking method be developed, it is submitted that there is no obvious reason why other suppliers, in particular those of a similar size to Johnston Oils, should not begin to undertake the same process of survey and replacement immediately. Further, Johnston Oils would endorse

Mr Sylvester-Evans' observation that the development of a risk based strategy should not result in the other initiatives recommended by him being unnecessarily delayed in their implementation.

7. Introduction of a Registration Scheme:

The introduction of a registration scheme for suppliers of LPG is highly desirable in order to encourage a collaborative approach by the industry in the implementation of any changes to the LPG regime. Further, it is submitted that the likelihood of successful and efficient implementation will be enhanced by the adoption of Mr Sylvester-Evans' recommendations that suppliers be accredited, and that it be a criminal offence to supply or use LPG where there is not in place a verified safety dossier. These measures provide an example of the extent to which Mr Sylvester-Evans' recommendations complement each other and that, when taken together, provide an effective answer to the deficiencies which have been identified. In that regard, Johnston Oils would endorse Mr Sylvester-Evans' opinion that it is important when assessing any particular measure to consider it, not in isolation, but as part of an integrated set of recommendations.

8. Extent to which LPG suppliers should be responsible for the integrity of equipment at a site:

It would appear that there is a measure of agreement between Core Participants that it would be inappropriate for suppliers to be responsible for any pipework downstream of the 1<sup>st</sup> stage regulator. It is a view shared by Mr Sylvester-Evans who summarised the reasons at paragraph 22 of his Note that "...to be responsible for the service pipe is a) contrary to the Robens principle, b) the supplier does not have management control over the day-to-day operations and c) has certain practical difficulties in assuming responsibility for existing pipework (such as insurance and risk assessment issues) and hence creates additional complexities." Johnston Oils would endorse these views.

9. In the course of evidence led in relation to where responsibility should lie in relation to pipework downstream of the 1<sup>st</sup> stage regulator, concern appeared at one stage to be expressed regarding the lack of knowledge of the user in relation to LPG and pipework if given responsibility for service pipework. It is submitted that whilst it is, of course, correct that a supplier has generally much greater knowledge than a user in relation to LPG, any perceived risk that there may be associated with that lack of knowledge on the

part of the user is removed by the recommendation that the user be required to maintain a safety dossier, and that it be subject to periodic independent verification.

10. Insofar as the precise point up to which supplier responsibility should extend is concerned, it is submitted that it is crucial that there be consistency throughout the industry in order that there is no risk of confusion between users and suppliers as to where respective responsibilities lie. Further it is submitted that having regard to the fact that LPG is supplied in certain cases at high pressure (up to 7bar in pipework from tank to 1<sup>st</sup> stage regulator) at commercial installations, or to multiple tank installations where there may be extensive pipework between the tank and 1<sup>st</sup> stage regulator, it would be important in the interests of safety that responsibility for pipework up to the 1<sup>st</sup> stage regulator be restricted to the supplier. Further, it is submitted that suppliers' responsibility should include the 1<sup>st</sup> stage regulator which, it is understood, is an item of equipment the maintenance, inspection and replacement of which requires specialist skills which the majority of Corgi registered engineers are unlikely to possess unless they have had considerable experience in the LPG field. In relation to this aspect it is submitted that responsibility to any degree for pipework should lie only with suppliers who own the bulk storage tank under consideration.

11. Finally, Johnston Oils would wish to take this opportunity to express its deepest sympathies to the bereaved families and the survivors of this appalling tragedy.

Peter Gray QC

12 November 2008