

ICL Inquiry

Summary Note on Parties' Views of RSE Recommendations

This document summarises parties' views on the substantive recommendations I proposed for consideration at Phase 2 of the ICL Inquiry in my Report to the Inquiry, dated 9th September 2008. The recommendations were given in Chapter 8 and the reference (given in brackets below) is to the paragraph where the recommendation appears in that Report. I have also provided a brief response, where appropriate, to parties' views.

1. *Wherever possible, the number of 'interfaces' between responsible parties should be reduced to the minimum so they can be managed actively. (3.3.1)*

There appears to be general agreement between all parties that the number of physical interfaces of responsibility for a LPG system should be reduced to a minimum and for them to be defined clearly and managed actively. Further, parties agree there is considerable merit in standardising the location of the 'interface' for all LPG systems at commercial and industrial premises.

2. *Each party has: -*

- ***a clear account of who has legal title to each part of LPG system and the land on which it is placed;***
- ***a clear account of who has legal responsibilities under the HWSA and its relevant statutory provisions;***
- ***a diagram, which is created and maintained in an accessible location at the LPG user site, showing the areas of responsibilities and the physical location of points of interface;***
- ***a clear account of the responsibilities and accountabilities of each party which includes reference to the relevant statutory provisions which must be met. (3.3.7)***

There appears to be general agreement between all parties, although the HSE (Sandra Caldwell) observe that, if a verification system was introduced, there may be a better alternative than to have this material lodged in a 'Safety Dossier'.

I note in the UKLPG written response to recommendation 20 their members did not consider it was right to extend the responsibility of the LPG supplier and that the safety responsibility for service pipework and the LPG system lies with the site

operator. I concur with this view and discuss the matter further under recommendation 22 below.

- 3. *The UKLPG (or an equivalent body) should prepare guidance on the general recommended practice for its members with respect to ownership, the division of responsibilities and what duties that places on parties. (3.3.9)***

There appears to be general agreement between all parties as to the need for guidance. However, HSE believes it would be better placed to provide the guidance.

I see an advantage for HSE to provide this guidance, particularly for LPG users. The preparation of a joint guidance document might be very beneficial provided its preparation is not delayed.

- 4. *The LPG user (and if relevant the land owner/managing operator) should be required to retain relevant up-to-date information on its LPG system. It should include, but not be limited to : -***

- *design and installation details, simplified as is necessary, with suitable drawings and plans;*
- *details of the safe operating envelope for the LPG system;*
- *a summary of the engineering safeguards designed to prevent unwanted events;*
- *inspection results and reports.*

For an individual LPG user, this information should be held on site in an LPG 'safety dossier' - as recommended below. (4.5.1. & 4.5.2)

There appears to be general agreement between all parties in the application of this recommendation to LPG systems at commercial and industrial premises.

- 5. *Every party who is responsible for buried metallic LPG pipework should develop an inspection and maintenance strategy which evaluates the condition of the pipework, on-going inspection requirements and any immediate remedial measures that are required, such as installation of cathodic protection or replacement. (4.5.4)***

All parties agree with the need for an inspection and maintenance strategy within an overall risk based replacement strategy for all metallic buried LPG pipework (apart for special circumstances such as pipework conveying liquid LPG).

I concur with this approach, whereby the high risk pipework is identified and removed and then lower risk pipework is removed progressively. I agree the use of cathodic protection is one of a number of possible remedies that might be applied to certain piping systems pending replacement.

- 6. A certification or 'verification scheme' be introduced that requires an 'independent competent person' (ICP) to verify the integrity of the LPG system at each LPG user site prior to a LPG supplier being permitted to supply, or continue to supply, LPG to that site. Site verification by the ICP would have to be renewed periodically, at a prescribed frequency to be determined. (4.5.5)**

Calor's concerns are that verification is unnecessary and the issue is best handled by the Safety Dossier and extending the GSIUR to industrial premises.

UKLPG express serious concern with the issue of 'verification'. Their members' concern is that a new formal competency system would be required which would involve considerable work and time to implement and would require ongoing monitoring. In addition, these new competency requirements would add to the burdens on the existing skill shortages. Further, the UKLPG members are concerned that the 'verification scheme' would externalise the accountability and responsibilities for the certification of system safety which should remain with the duty holder. Overall, UKLPG members believe the effort and available resources are best directed to the pipework replacement programme (with PE pipes that do not require verification) and other RSE recommendations, together with the extension of the GSIUR to industrial premises.

HSE does not object to the scheme in principle so long as it does not divert resources from the prioritised metallic pipework replacement programme.

I proposed a verification scheme, within the overall package of recommendations, as an important means to encourage compliance by LPG users with their existing H&S 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. As shown by ICL, changes in the 'environment' can introduce new hazards and can remove vital safeguards. For these reasons, in my opinion, a verification scheme should be introduced. However, in no way should the introduction of such a scheme remove the primary H&S duty from the LPG user/site occupier.

7. Any verification scheme should be developed jointly by UKLPG (with its members) and the HSE. (4.5.7)

If a verification scheme is implemented, then there is general agreement to this recommendation, although HSE believes that it should take the lead role, particularly if the scheme was to involve CORGI or their successors.

8. All existing industrial and commercial LPG facilities are inspected and upgraded to ensure: -

- **LPG pipe entries into buildings are above ground and fitted with an ECV;**
- **LPG pipework is not routed through unventilated spaces;**
- **Where this is not feasible, then acceptable alternatives are provided which must be verified by an ICP. (5.3.1)**

There is broad agreement with this recommendation, whereby engineering solutions can be found to ensure that all existing installations are brought up to an equivalent standard of new installations (CoP 22). However, HSE (Sandra Caldwell) believes that there might be some difficulty in implementing the first bullet point.

The important requirement is for the LPG user to demonstrate that any alternative solution provides an equivalent and acceptable level of safety which is subject to an independent review (verification).

9. UKLPG prepares practical advice for industrial/commercial LPG users on how to fulfil their statutory duties, particularly under DSEAR. This should be done in consultation with HSE. (5.3.2)

There appears to be general agreement between all parties on the need for this recommendation, although the HSE believes that it should take the lead. I agree with this proposal. However, I would emphasise the need for 'practical' advice as it will

assist any verification process and encourages a broadly appropriate and common approach for installations of a similar type.

- 10. A process is put in place that defines, for each LPG user site, whether: -**
- **HSE inspectors or LA enforcement officers are responsible for general inspection and enforcement; and**
 - **HSE inspectors or LA Building Control are responsible for oversight of the building/structural safety to ensure the building is suitable to meet the LPG risks. (5.3.3)**

It is understood there is a current H&S requirement that requires the site occupier to include the name of the enforcing authority on the Safety Notice required in the workplace. It could be included in the Safety Dossier.

With respect to the oversight of structural safety and whether it is suitable to meet the LPG workplace risks in existing buildings, there does appear to be a lack of transparency and the Inquiry currently awaits clarification by HSE. In my opinion, this fact only reinforces the need for the recommendation.

- 11. The LPG supplier should be obliged to provide the LPG user with a summary of its asset register, critical safety features, examinations, inspections and risk assessment for its equipment on the LPG user's site. (5.3.4)**

There appears to be general agreement of all parties with this recommendation.

- 12. LPG users should be obliged to compile a 'Safety Dossier' for their LPG system. (5.3.5)**

There appears to be general agreement of all parties with this recommendation.

- 13. Guidance and a practical template for a 'Safety Dossier' should be developed by UKLPG (with its members) and in full consultation with the HSE. (5.3.6)**

There appears to be general agreement of all parties with this recommendation.

Some parties appear to suggest that the 'Safety Dossier' might dispense with the need for a verification scheme. The intent of this recommendation is to provide, first,

a convenient repository for data which encourages a continuity of knowledge on the user's LPG system and, secondly, a means whereby the LPG user can briefly demonstrate the safe design and operation of its LPG system. In that sense the data contained in the Safety Dossier should facilitate the process of verification by an independent competent person, but is not a substitute for verification which checks the quality of the safeguards.

14. *The Inquiry considers, as appropriate: -*

- ***improving the ongoing communication from the LPG supplier to the LPG user of generic type material relating to the safe use of LPG, LPG user's legal duties and more detailed guidance on control and mitigatory measures;***
- ***the formation of a LPG suppliers and users forum (or similar) to provide a mechanism of sharing knowledge. (6.4.1)***

There appears to be broad agreement of all parties with the first recommendation, although it is recognised that some LPG suppliers are providing a considerable volume of documentation already.

As to setting up a LPG supplier and users forum, this may develop from consultations with various LPG user groups when preparing practical guidance documents (e.g. recommendation 9). Also, UKLPG might wish to consider a web-based user/supplier forum.

15. *HSE (or whoever is responsible) should publish more authoritative and detailed guidance on assessing whether existing building/structural safety is adequate and commensurate with the workplace hazards and risks, such as the use of LPG; see also recommendation 10. (6.4.2)*

The Inquiry awaits a response from HSE as to who is responsible (see recommendation 10). Again, there appears to be a lack of authoritative guidance and, in my opinion, this matter should be remedied without delay.

16. *Appropriate mechanisms are put in place to collate the existing and future data on LPG incidents for the LPG supplier and LPG user to actively learn lessons from LPG failures and incidents, adverse trends can be identified and periodic safety bulletins circulated to relevant parties as required. (6.4.4)*

Whilst UKLPG has been collecting information on incidents in the past, they note that this recommendation is supported fully by its members and would welcome an input from HSE on this matter.

- 17. *An appropriate mechanisms be put in place to establish, for industrial and commercial categories of bulk LPG sites (and any other categories or sub-categories deemed useful by the Inquiry) key statistics to assist in assessing the overall risk and monitoring progress of implementation of the Inquiry's recommendations. (6.4.5)***

This work is currently being undertaken by UKLPG and its members.

- 18. *During the transition phase, implement a basic risk ranking method to prioritise the LPG user sites, particularly with buried metallic pipework, which are deemed especially 'high risk'. (6.4.6)***

The Inquiry has heard how the work of developing a risk based strategy has progressed to date, as well as the actions of JGas. All parties agree this is the top priority. I agree this must be the case. However, in my view assigning a top priority to the risk based strategy should not mean that other initiatives should be put on hold. Many of the recommendations compliment each other and encourage the LPG user to comply with its health and safety duties.

- 19. *The Inquiry considers a 'registration scheme' be introduced by LPG suppliers, whereby bulk LPG could only be supplied to LPG user sites by 'registered' suppliers. (7.2.4)***

Mr Shuttleworth explained that UKLPG members had mixed views on whether a 'registration scheme' should be introduced, although both Calor and JGas support this approach. UKLPG's concern is that, if introduced, a 'registration scheme' should not be too onerous and represent any barrier to competition in the market place.

As I expressed in my evidence, it is desirable to ensure that all LPG suppliers are identified and, therefore, cannot operate beneath the radar. If there exists, or is likely to exist in the future, problems of the less safe LPG supplier who undercuts those LPG suppliers who are competing fairly and safely in the market place, then this

should be capable of speedy identification so that enforcement action can be taken by HSE if appropriate. I note in paragraph 7.2.4 (of my Report) that the 'registration scheme' should ensure only 'accredited suppliers' are permitted to supply bulk LPG to LPG user sites. In my opinion, the degree to which accreditation is necessary and implemented is best decided between UKLPG and HSE, in view of the competition issues.

When preparing my Report I did not envisage that a 'licensing scheme' should be introduced. That would be a 'permissioning regime' and would represent an onerous burden on HSE and the suppliers. HSE's policy on Permissioning Regimes is set out in a 'Policy Statement' published in March 2003.¹

20. *The Inquiry considers whether legislation is introduced whereby it would be a criminal offence to supply or use an LPG system which did not have an up-to-date verification certificate. (7.2.4)*

UKLPG's members express concern with the introduction of such a criminal offence as it changes, fundamentally, the principle that the user is responsible and hence risks increased complications and moving the criminal responsibility from user to supplier. The example quoted concerns the liability of the LPG supplier where it doubts the fitness of the LPG system to take gas, but the LPG user has a valid 'certificate'. UKLPG believes the other recommendations will provide a regime where the user's and supplier's responsibilities are clearly defined and that it is for the HSE to ensure that these are adhered to. In the view of the members, the recommendation is disproportionate compared with other recommendations made by RSE.

This recommendation was proposed in order to provide 'teeth' (if it is considered necessary to strengthen the current legislation) to combat the potential rogue LPG user and potential less scrupulous LPG supplier and, thereby, to protect the majority of LPG suppliers. The intent is for the LPG supplier's responsibilities to remain unchanged except to confirm that a valid certificate exists. In the example quoted by UKLPG, if the LPG supplier is aware of an unsafe condition, then it must act appropriately. The certificate is to ensure all those unseen parts of the LPG system

¹ HSC "Policy Statement - Our approach to permissioning regimes", March 2003

and those remote from the LPG tank and filling operation have been periodically certified as safe; namely, that the system is fit for purpose.

- 21. *The Inquiry considers assigning target timescales for the implementation of its recommendations, together with the body responsible for its implementation and, where necessary, the body who should monitor progress of its implementation. (7.1.4)***

There appears to be general agreement of all parties with this recommendation.

- 22. *The relative advantages and disadvantages of the extent to which LPG suppliers should be responsible for the integrity of equipment at a site, and to confirm, or otherwise, the best approach is for the LPG supplier to be responsible up to (and possibly including) the 1st stage regulator (3.3.3).***

After hearing the evidence, my opinion remains that, for commercial and industrial premises, the preferred approach is for the LPG supplier to be responsible for the tank and fittings and not for the service pipework. 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.

The alternatives that the interface should be at the vapour/liquid off-take valve (Calor's current position) or at, or just before, the 1st stage regulator both have their merits. However, it is desirable for standardisation to be achieved.

Rod Sylvester-Evans
7th November 2008