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Legislative framework

If the inquiry wishes to look at the legislative framework, and its adequacy to prevent the next ICL type explosion, it needs to recognise that large numbers of small LPG tanks, most of which will have underground pipelines, are located at premises not inspected by HSE. These may be commercial type premises, allocated by regulations under the HSW Act for LA inspection, or they may be domestic premises.

LA inspectors, who are concerned about an LPG facility at a site they are inspecting can, in principle call on HSE for help, and through this, call on specialist inspector support, but this is rare, except where there has already been a serious incident.

At domestic premises, the only work activity is filling the tank, an activity that lasts perhaps 5 minutes/month, and there is no effective legislation to ensure that the gas suppliers do anything to control the safety of the installation, particularly since, as at ICL, they usually do not own anything downstream of the tank regulator.

HSE has held discussions with the competition authorities who see the traditional system of having the tanks owned by the gas companies, as restricting competition in the market. Switching gas suppliers requires tank replacement. However, the system of having the tanks owned by the gas companies does create a mechanism by which HSE can enforce the periodic inspection of tanks. If tanks were owned by householders, there would be no mechanism to ensure that such tanks were periodically inspected.

On the positive side, most underground low pressure pipelines are now laid in plastic pipeline not prone to corrosion. There is probably no simple way of determining how many LPG tanks at non-factory premises have metal underground pipelines.

The interface of HSE with building control and the Scottish Building regulations would merit review. Requirements relating to LPG facilities are now covered in technical handbooks issued during 2008 in support of the Scottish Building Regulations, but their coverage may omit issues that are relevant to the ICL case, and in particular the issue of ongoing maintenance of gas installations. The position has changed extensively since that which was current when I visited the ICL factory in 1988. The regime at that time is discussed in the Rutherglen report p21. The English Building Regulations bear little resemblance to the Scottish version.

From HSE's perspective the position is tricky. HSW section 23(3), a masterpiece of the art of the parliamentary draughtsman, sets out limitations to HSE powers in connection with matters falling also under building control. The intricacies of building legislation, and lack of understanding of any of it by most front line inspectors tended to leave HSE inspectors very wary of any issue that might be better enforced by LA building inspectors.

HSW section 1 (1) c gives HSE powers which they have strenuously tried to avoid implementing, but which could be used to bring in regulations controlling domestic LPG tanks.

From the point of view of building control, my experience was that few building control officers understood the interface of their legislation with that of HSE, and liaison was infrequent. Moreover, as I think the inquiry heard, they tend to be only reactive, responding only to applications, but where an occupier chooses to ignore building regulations, they have no proactive method of identifying these sites.

The situation is different with the fire brigade, where, following the civil action after the Bradford football club fire, the demarcation between the fire authorities and HSE was very carefully drawn. Knowledge of the relative responsibilities of each other was incorporated into training, and issues that fell within the remit of both sets of legislation were sometimes resolved by a 3 way meeting with the site occupier.

A Tyldesley

Addendum to Mr Tyldesley's submission received 20 August 2008

The potential consequences of failure of an underground gas pipe, and the ability of gas to migrate through the soil, into the basement of a building, and cause explosions that resulted in severe damage was known by myself, and other HSE specialist inspectors.