

# BRUNSWICKS' REGULATORY NEWS

A monthly digest of recent regulatory prosecutions and what else is making the news

## IN THE COURTS OR UNDER INVESTIGATION:

### BNFL FINED £500,000

When things go wrong and you need legal advice now

Crisis Intervention  
Line

07855 855 588

available 24 hours a  
day, every day

#### Inside this issue:

In Court	1
What's New?	9
Contact Us	12

British Nuclear Group Sellafield Limited was fined £500,000 plus costs in excess of £67,000 after pleading guilty to breaching health and safety law. The HSE brought the prosecution following the discovery of a significant leak of highly radioactive liquid within Sellafield's THORP reprocessing plant in April 2005. After the hearing at Carlisle Crown Court, Dr. Mike Weightman, HSE's Director of Nuclear Safety and HM Chief Inspector of Nuclear Installations, said: "Our extensive investigation into the events in THORP has shown that BNFL fell significantly short of the required standards for a considerable period of time before the leak was discovered. Although we stress that there is no evidence of any harm to workers or the public, the leak being contained within a stainless steel lined, heavily shielded cell, there had been a significant prolonged reduction in attention to the high standards demanded, something we are not prepared to tolerate. THORP was Sellafield's flagship plant and built to high standards. It must also be operated, maintained and managed to the high standards we insist on, and the public have a right to expect from the nuclear industry. For the wider nuclear industry, our message is clear: high standards are demanded of the nuclear industry, this means continued vigilance and close attention to maintaining all the multiple physical and administrative

barriers put in place to protect people and society from highly radioactive material. It is not acceptable to allow any of these barriers to degrade and weaken, relying on the existence of other barriers to secure continued protection. Industry must continue to embrace high standards of design, construction, operation and maintenance and vigorously strive to maintain them at all times." BNFL's THORP plant reprocesses nuclear fuel from overseas and from the UK's second-generation of commercial reactors. The plant has been shut since April 2005. The HSE charged BNFL with breaching three conditions of the site licence granted to it under the Nuclear Installations Act 1965. These conditions require the licensee: to make, and comply with, written instructions; to ensure safety systems are in good working order; and to ensure radioactive material is contained and, if leaks occur, they are detected and reported.

At a hearing before Whitehaven Magistrates Court BNFL pleaded guilty to the three charges. The company was committed for sentencing to Carlisle Crown Court. The sentencing hearing took place on 16 October 2006.

The maximum penalties for these offences in this court is unlimited fines.

## SCAFFOLD FOLLIES PENALISED

Following a scaffolding collapse at Hawkhill Avenue Edinburgh in May 2005 in which a worker was injured two companies have been fined.

Deborah Services Ltd of Wakefield was fined £110,000; while Beechwood Development Company (Scotland) Ltd of Clarkston, Glasgow, was fined £22,000. Both companies pleaded guilty to breaches of HSWA 1974.

Beechwood was acting as Principal Contractor for a development of new flats at Hawkhill Avenue, while Deborah were contracted to provide scaffolding services for the project. At about 10am on May 24, 2005, two sections of a loading bay tower approximately 16 metres in height collapsed. A subcontractor, Paul Laidlaw, who was working on the scaffold 12 metres from the ground, fell roughly five metres into the components of the collapsing tower and appears to have been struck by a board or other component. He suffered a severe head laceration, a broken wrist and a broken rib.

The loading bay tower collapsed as a pallet of building blocks weighing one tonne was loaded onto it.

The HSE investigation revealed that the structure had been severely overloaded and that a number of factors contributed to the final collapse. The primary factors were failure to appreciate that such a structure would require to be designed; a failure to provide information on the safe loading for this structure; and, a failure to

control the loading of material onto the structure.

HSE Principal Construction inspector Jim Skilling commented after the case: "*This was an extremely serious accident which could have lead to a loss of life. The scaffolding tower was not designed and then overloaded, and this led to its collapse. This accident was entirely preventable and the fines imposed today reflect the seriousness of this case.*"

Following a series of scaffolding collapses in recent years, HSE Inspectors have carried out a considerable number of site visits to discuss scaffolding issues. Additionally a number of events have been held to further raise awareness within the industry - Scaffolding Safety and Health Awareness days in Edinburgh, Dundee and Kelso, and advisory events in the west and north of Scotland.

The HSE have also written to every scaffolding contractor in Scotland, reminding them of their responsibilities - to provide a suitable stable working platform that has been erected by competent personnel. Mr Skilling added: "*It is important for contractors to have systems in place to ensure scaffolding is fit for purpose. Workers and members of the public have the right to be protected.*"

Edinburgh Sherriff's Court 27 October 2006

Maximum penalties for these offences in this court—unlimited fines.

## FATAL CRUSH

Nightfreight (Great Britain) Limited was fined £150,000 and required to pay costs of £91,000 after pleading guilty to breaching the health and safety duty they owed individuals who may be affected by their work (s3 HSWA 1974)

The case was brought by the HSE follows its investigation into the death of 48 year old lorry driver Neil Prestage. Mr Prestage was crushed and killed by a reversing lorry on 6 February 2002. Speaking after the case, the HSE investigating inspector Dr Wai-Kin Liu said: "*The death of Mr Prestage was the tragic result of a failure to manage workplace transport at Nightfreight's site in Willenhall. Every year 70 people are killed and 2,000 more are seriously injured in incidents involving vehicles at work. Those with responsibilities for workplace transport must ensure*

*they are complying with the law to stop this deadly toll. Carrying out a risk assessment for workplace transport and making sure that it is practical and effective is sensible health and safety.*"

Mr Prestage from Nottinghamshire, a lorry driver for another company, was visiting the site, when he was fatally crushed by a reversing lorry.

The accident happened at Nightfreight (GB) Ltd's site at Birches Rise, Willenhall.

Wolverhampton Crown Court Friday 20 October 2006

Maximum penalty for this offence in this court—unlimited fine.

## ADMITTED MANSLAUGHTER—2 YEAR TERM

Scott Lee Stuart pleaded guilty to manslaughter and received a 2 year prison sentence following the death of a 14-year-old Alexandra Mitchell from Cwmbran. He was also pleaded guilty to specific health and safety offences.

Stuart was a gas fitter. Miss Mitchell died from Carbon Monoxide (CO) poisoning at her home after Stuart had fitted a flueless gas fire in March 2005. Despite being CORGI registered to fit boilers, he had not had his competence to fit gas fires assessed by a recognised body.

The HSE Inspector Hugh Emmment, who assisted in the investigation led by Gwent Police said: *"This tragic case proves the dangers posed by faulty or incorrectly fitted or tested gas appliances and the potential for CO poisoning. I would urge members of the public having gas work carried out to ensure CORGI registered personnel do it. It is a legal requirement for gas fitters to be CORGI registered, and that registration must cover the type of appliance being fitted. Gas fitters must carry CORGI identification and this sets out the types of appliances they are competent to work on. Anyone having work done*

*on a gas appliance should firstly check their fitter is CORGI registered and secondly that their registration covers the appliance in question."*

Detective Chief Superintendent Ray Wise, Head of Gwent CID said: *"I totally endorse the comments of the Health and Safety Executive. This conviction for manslaughter sends out a clear message that those tradesmen that purport to be qualified and are not will be held accountable under law where injury and death occur. They are playing with people's lives and the public must be alert to the fact that such people are operating in our community. Our thoughts at this time and the sympathy of all the investigation team are with Alexandra's family."*

Around 20 people are killed every year from CO fumes from household gas appliances.

6 October 2006

Maximum penalty for this offence in this court—life imprisonment.

## COUNCIL SHOCKER

The HSE is reminding businesses about the dangers their employees and contractors face in working at height and are urging them to ensure proper safety measures are taken. The warning came after Denbighshire County Council and self-employed contractor Neil James were prosecuted for an incident in which a worker fell nearly 5m through a fragile roof at a farm in Rhuddlan. The worker, David Evans, sustained injuries to his knee, arm and a dislocated shoulder in the fall at the Council owned Bryn Gwyn Farm. Both the Council and Neil James pleaded guilty to charges under section 3 HSWA. James was fined £1,000 with £500 costs, whilst the Council were fined £8,000 with £5,300 costs. HSE inspector Debbie John said: *"Despite his injuries, Mr Evans was lucky to escape with his life from this incident as there are*

*too many fatalities resulting from falls, and often from a much lower height than 4.9 metres as in this case. Working at height is an occupational hazard in many jobs, but it is imperative that employers take the necessary safety precautions when any of their workers are in this position."* There were 53 fatalities in the Great Britain as a result of a fall from height, nearly one quarter of the 220 fatalities across all industries.

Wrexham Magistrates Court

Maximum penalty for these offences in this court—£20,000 fine

**Brunswicks' Healthcare Review**

**Out Now**

Free weekly updates delivered by email.

To subscribe see back cover for details

## FATAL PLUNGE IN THE DARK

Firms from Manchester and Preston respectively were fined a total of £300,000 at Liverpool Crown Court yesterday following the death of labourer Joseph Alan Reynolds in Oldham in October 2003. Future Environmental Services Ltd of Unit 21, Charnley Fold Estate, Charnley Fold, Preston, pleaded guilty to, and Bethell Construction Ltd of Dane House, Europa Park, Stoneclough Road, Kearsley, Manchester, M26 were found guilty of two criminal charges: first, a breach of Section 3 HSWA in that they failed to adequately protect the health and safety of someone not in their employment, for which each was fined £100,000, and secondly, a breach of Regulation 3 (1) (b) MHSWR 1999 in that they failed to make a suitable and sufficient assessment of the risks to the health and safety of persons not in their employment, for which each was fined £50,000.

Future Environmental Services were ordered to pay costs of £14,079 and Bethell Construction were ordered to pay costs of £49,110. Joseph Alan Reynolds, from Beatrice Street, Bootle and normally referred to as Alan, fell five metres to his death over an unprotected edge in the Snipe Clough consented sewerage overflow (CSO) at Oldham on 17 October 2003. A CSO is a large underground structure, part of the sewerage system in Oldham. Bethell Construction Ltd had been hired by United Utilities to carry out maintenance work in the CSO. They, in turn, had hired Future Environmental Services to carry out the work. Bethells were in control of the site. Alan Reynolds worked for Daniels Contractors, but was hired out to Grisedale 2000 Ltd, a Liverpool com-

pany. Grisedale hired Alan, together with his colleague Thomas Cullen, to Future Environmental Services Ltd to work in the Snipe Clough CSO for two days, clearing debris from the main sewer that lies 12 metres underground, and is reached via a landing. HSE Inspector Christina Goddard, who led the case for HSE, says: "*Alan and Thomas arrived on site, put on their harnesses and went down the first vertical ladder onto the landing. They should have unhitched from their fall arrest line, turned to face away from the ladder, walked about two metres to their left and then gone down a further ladder to the main sewer. The first landing was about seven metres underground. Unknown to them, there was an opening leading to another ladder, right next to the ladder down which they had just come. Thomas went down first, followed by Alan. Thomas unclipped Alan from his fall arrest line, Alan, whilst turning to face away from the ladder fell about five metres onto a concrete floor through the opening. It was a bright sunlit day, and the underground chamber, although lit, was very dark by comparison. Alan and Thomas simply did not see the opening. The opening was not needed, and should have been properly barriered off, to prevent anyone from falling. It was sheer good luck that Thomas did not fall as well. Falling from height is a major cause of death and injury in the workplace. In this case, Alan Reynolds died on his way to the main work area. It is important that hazardous jobs are properly assessed, and this includes taking the access and egress routes into account.*"

Liverpool Crown Court—25 October 2006 Maximum penalty for these offences in this court—unlimited fines.

## LAUGH OR CRY?

Sometimes you come across offences which, were it not for the potential harm that could have been caused strike you as laughable. This is one such case.

Garrick Engineering Co Limited was fined a total of £5,000 and ordered to pay costs of £2,145 after pleading guilty to two criminal charges brought by the HSE after two teenage employees had been found standing 2.5 metres in the air on a pallet on the raised forks of fork lift truck. Michael Pollock and Scott Whitehead were both 18 at the time of the incident on 30 November last year and were new employees of Garrick Engineering on the Canning Road Industrial Estate in Southport. The company pleaded guilty to a charge under reg 3(1) MHSWR 1999 in that they failed to carry out a suitable risk assessment, for which it was fined £3,000, and a charge under Regulation 6(3) of the Work at Height Regulations 2005

in that they failed to take suitable measures to prevent people falling a distance liable to cause personal injury, for which it was fined £2,000. HSE Inspector Gill Chambers who took the case for HSE, said: "*The two young men were raised to an approximate height of 2.5 metres on a pallet on the forks to unfasten the cover on a container which had been left on a trailer. If the crane on site had been used to place the container on the ground the employees could have safely accessed the top with the use of the steps provided. The two young men risked death or serious injury from this unsafe practice.*" Between 1997 and 2001 the HSE investigated 54 falls above 2m from lift trucks: 87% of these involved fatal or major injuries.

Southport Magistrates Court—18 October 2006 Maximum fine per offence in this court £5,000

## A CHANNEL PLUNGE?

Channel Commercials, a motor vehicle repair and maintenance company, has been fined £10,000 and ordered to pay £3,936 in costs. The prosecution followed an investigation by the HSE into an incident that occurred on 8th September 2004. David Paling, a 50-year-old HGV driver, fell into an unguarded wash pit as he visited the premises to collect a trailer. Mr Paling, from Charlton, south-east London, suffered a cut to his head which required five stitches, a fractured right shoulder and a sprained ankle. Channel Commercials Plc, of Brunswick Road, Cobbs Wood Industrial Estate, Ashford, was fined £10,000 after pleading guilty to breaching s3 HSWA 1974. The company was also ordered to pay costs of £3,936. After the hearing, Jan Combs, HM Inspector of

Health and Safety, said: "*The dangers of falling into pits is well publicised by HSE's website and company was specifically warned of the dangers inherent in their unguarded wash pit by Health and Safety Awareness Officer about a month before the incident. Sadly, they still failed to provide a suitable assessment of the risks of this particular area. Immediately after the accident the company took the simple but effective measures needed to protect visitors in the vicinity of the wash pit. The HSE is saddened that this did not happen before. Good intentions are not enough to prevent accidents.*"

Sevenoaks Magistrates Court—28 September 2006

Maximum penalty for this offence in this court £20,000

## YORKSHIRE POST IN THE HEADLINES

The Yorkshire post, normally writers of headlines are in the news for the wrong reasons. Yorkshire Post Newspapers Ltd and BDC (Morley) Ltd at Leeds Magistrates' Court both pleaded guilty, were each fined £10,000, plus costs of £2,210 each following an accident on 19 October 2005 in which an employee of BDC (Morley) Ltd was injured in a fall down a lift shaft.

Yorkshire Post Newspapers Ltd had contracted BDC (Morley) Ltd of Fountain Street, Morley, to dismantle a goods lift shaft within their production area at Wellington Street, Leeds. The injured man, one of two employees of BDC carrying out this work, used a metal plate located at the top of the lift shaft, as a working platform, whilst removing the motor. This plate was not designed for this purpose and it gave way. As a result the worker fell 5.5 metres from the top of the lift shaft to the ground floor, sustaining a broken leg, broken ribs, as well as severe bruising.

After the accident HSE issued Yorkshire Post Newspapers Ltd with a Prohibition Notice which prevented the lift shaft from being dismantled further until the work had been properly planned. HSE Inspector Andrea Lowe

said: "*This accident was entirely foreseeable and preventable. A suitable risk assessment should have identified safe means of working at height. Dismantling any structure whilst working at height is a particularly hazardous activity. As a result it is fully covered by specific regulations requiring detailed assessment and planning. BDC had never been involved in dismantling a lift shaft of this type before so it was essential that they approach this work with a proper plan. Equally had Yorkshire Post Newspapers Ltd a full understanding of their legislative duties, then they would not have relied upon the contractors to discover the hazards as they went along. Yorkshire Post Newspapers Ltd had a duty to adequately assess the risks and monitor the contractors working on their premises. After such a fall, the injured man in this case was very lucky not to have received more serious injuries. This case serves as a reminder to us all not to underestimate the hazards involved in working at height.*"

Yorkshire Post Newspapers Ltd was charged under Section 3(1) HSWA. BDC Morley Ltd was charged under Section 2(1) HSWA

Leeds Magistrates Court

Maximum penalty for these offences in this court—£20,000

When things go wrong you need legal advice now



Crisis Intervention Line

07855 855 588

available 24 hours a day, every day



## IF ONLY HE'D BEEN RUGBY TACKLED

The HSE has warned companies to ensure that adequate precautions are being taken to prevent injuries due to falling from height - which claim around 50 lives a year. The warning comes after David Rose of Portal Power was fined £10,000 and costs of £607 following an accident, which resulted in an employee falling 7m through a fragile roof light. In addition £4,000 compensation was awarded to the injured party Steven Edkins. Speaking after the case, HSE investigating inspector Alex Nayar said: "*Experience shows that falls from height usually occur as a result of poor management control rather than because of equipment failure. It was unfortunate that on this occasion fragile roof lights were not covered as this would have prevented the fall. Companies need to realise the necessity of implementing appropriate safety measures to provide a safe working environment, preventing falls and avoiding injuries. An additional control measure which could have been used, but was not in this case, concerns use of safety nets, which constitute one of the most significant advances in recent years in relation to work of this*

*type. The nets are slung on the underside of the roof from the supporting steel work and whilst they do not prevent a fall, they significantly limit the magnitude of injury sustained. HSE fully endorses their use in this type of situation. Nets are now acknowledged to be an industry standard safety measure across the country, and this has been the case for the past five or six years.*" Alex continued: "*Falls from height are the most common cause of fatal injury and the second most common cause of major injury to employees. Every year, around 80 people are killed and more than 5,500 seriously injured as a result of falling from height*" Steven Edkins age 19 from Rugby, was part of a team of workers dismantling a warehouse structure in Sommers Road, Rugby. Whilst undertaking roof removal on 7 September 2005 he stepped on to a fragile roof light which failed and he fell seven metres on to a concrete floor. David Rose of Suffolk based Portal Power, a company specialising in dismantling portal buildings and roofing, pleaded guilty to a breach of s2 HSWA 1974

## RUDIMENTARY FAILURES LEAD TO DEATH

Cementation Foundations (Skanska) Limited, of Piping Lane, Bentley, near Doncaster, was fined £100,000 plus prosecution costs of £32,607 after pleading guilty to a breach of health and safety law. The case, brought by HSE, follows its investigation into the death of 47 year old, David Clark of Askern near Doncaster, an employee banksman who was crushed when a piling rig collapsed on him on 29 October 2002. Speaking after the case, HSE investigating inspector Carol Southerd said: "*This death was the tragic result of the company's failure to pay enough attention to the quality and reliability of the critical component parts of heavy plant and to the fatal risks associated with those working routinely inside the danger zone of a potential rig collapse or overturn. Preventative maintenance should be managed so as to ensure any replacement of critical parts are of*

*good quality and a thorough investigation is done into the reasons for replacement. Systems of work should be arranged so banksmen, working with piling rigs, are kept in a safe position during machine operation. Banksmen should be trained only to approach the machine for necessary operations at planned safe times.*" The accident, at a construction site in Canton Lane, Hams Hall, Coleshill, was caused by failure of a welded pin, which was critical to the stability of a piling rig. The part failed and the mast of the rig collapsed on David Clark. Cementation Foundations (Skanska) Ltd is a specialist firm in piling technology based in Doncaster. The company pleaded guilty to a breach of section 2(1) of the Health and Safety at Work etc Act 1974.

Warwick Crown Court— 20 October 2006

Handle your employees complaints and concerns with sense and sensitivity with Brunswicks'

### WHISTLEBLOWERS HOTLINES

give your employees a trusted outlet and you some options

Phone 0870 766 8400 or send an email to [hotlines@brunswicks.eu](mailto:hotlines@brunswicks.eu) for details

## DIRECTOR AND COMPANY FINED

A Widnes vehicle recovery company and its managing director have been found guilty of health and safety offences which led to the death of a company employee. Hough Green Garage Ltd of Pickering's Road in Widnes was fined a total of £96,000 and ordered to pay £20,000 costs while its managing director David Nigel Farrell of Cronton, Widnes, Cheshire, was fined a total of £14,000 and ordered to pay £15,000 costs. The charges arose following an incident on 31 December 2003 when Scott Allen, an employee of Hough Green Garage Ltd, was fatally injured while recovering a bus from Church Road, Garston, Liverpool. Mr Allen had been sent by his employer to recover a single deck Volvo B10 B bus, owned by Glenvale Transport Ltd of Aintree, Liverpool. The air suspension system on the bus failed while Mr Allen was working underneath the unsupported vehicle, which led to the body of the bus crushing him. He died on arrival at Royal Liverpool hospital. Hough Green Garage Ltd was found guilty on two charges under s2 HSWA, for which it was fined £60,000 and £30,000 respectively. There was a further charge under the Management of Health and Safety at Work Regulations 1999, Regulation 3, in that they failed to carry out a risk assessment in relation to the roadside recovery of vehicles, for which they were fined £6,000. David Farrell, Hough Green's managing director, was found guilty of two charges under HSWA section 37 in that he consented in the failure to comply with the company's failures under s2 for which he was fined £10,000 and £4,000 respec-

tively. David Sowerby, the HSE's Head of Operations in the North West said: *"On the behalf of HSE and Merseyside Police I would like to express our sincere sympathy to Scott Allen's family. HSE's guidance clearly states that no employee should work under unsupported vehicles, whatever the nature of the vehicle's suspension system. The tragic incident to Mr Allen was easily avoidable. To reduce the risk of this type of incident recurring, we have undertaken further work with the organisations representing the roadside recovery industry. All agree that recovery operators should never work under unsupported vehicles for any purpose - this includes both adjusting the bus's air suspension system using the levelling valve and also using this system to raise a vehicle to gain access underneath. Since the incident, the Publicly Available Specification, from BSI, PAS 43, 'Safe working of vehicle breakdown, recovery and removal operations. Management system specification', which is widely accepted by the industry, has been amended to emphasise this point. Additionally the HSE and the Institute for Vehicle Recovery (IVR) are about to publish new joint guidance on this matter. The fundamental failures: to have safe systems of work; proper risk assessments; and safe operating procedures were key factors in Mr Allen's death.*

Liverpool Crown Court—17 October 2006

Maximum penalties for these offences in this court—unlimited fines

## A COUNCIL FINED

The HSE is reminding businesses about the dangers their employees and contractors face in working at height and are urging them to ensure proper safety measures are taken. The warning came after Denbighshire County Council and self-employed contractor Neil James were prosecuted for an incident in which a worker fell nearly 5m through a fragile roof at a farm in Rhuddlan. The worker, David Evans, sustained injuries to his knee, arm and a dislocated shoulder in the fall at the Council owned Bryn Gwyn Farm. Both the Council and Neil James pleaded guilty to charges under section 3 HSWA at Wrexham Magistrates Court. James was fined £1,000 with £500 costs, whilst the Council were fined £8,000 with £5,300 costs. HSE inspector Debbie John said:

*"Despite his injuries, Mr Evans was lucky to escape with his life from this incident as there are too many fatalities resulting from falls, and often from a much lower height than 4.9 metres as in this case. Working at height is an occupational hazard in many jobs, but it is imperative that employers take the necessary safety precautions when any of their workers are in this position."* There were 53 fatalities in the Great Britain as a result of a fall from height, nearly one quarter of the 220 fatalities across all industries.

Wrexham Magistrates Court 12 October 2006

Maximum penalty for these offences in this court—£20,000

## DIRECTOR IS DISQUALIFIED

The HSE is warning consumers to be aware of the dangers of illegal gas fitters after a rouge trader was ordered to pay a fine of £2,200 and costs of £8,120 13 October at Croydon Crown Court. Fines and costs were awarded against Mr Christopher O'Mahoney and his company Gas R Us Limited. Mr O'Mahoney was also disqualified from being a director of a limited company for 2 years. Christopher O'Mahoney traded as Gas R Us Ltd of Shelgate Road Wandsworth, falsely claimed to have CORGI registration and carried out work on gas installations in London. A number of complaints were made to CORGI and the HSE about Mr O'Mahoney's work, which in some cases was found by Transco to be dangerous. Between November 2004 and March 2005 Mr O'Mahoney carried out work on a central heating system at a rented property in London Court, Frogmore. He falsely used a CORGI registration number that belonged to a legitimate CORGI Engineer. Mr O'Mahoney made several visits as the tenant was concerned about the work and could smell fumes from a gas fire. He claimed it was safe, but a Transco engineer subsequently disconnected the gas supply and labelled the boiler as dangerous. Following a complaint the HSE began investigating Mr O'Mahoney. However, despite the HSE's warning to stop his illegal work, he continued and issued 12 false gas safety records in a single day to a landlord, for his properties in Kensington and Chelsea and Islington. For this work he used the name "Chris Smith" and again he used the legitimate CORGI engineers registration number. In two other incidents, complaints were made to CORGI about Mr O'Mahoney's work. In Wandsworth he carried out work in September and October 2003. A subsequent CORGI inspection found that the wall had not been made good around the boiler flue. And following work by Mr O'Mahoney in Sutton on 7th January 2005, a CORGI inspection discovered that a fire had a gas leak. Following the hearing HSE inspector An-

drew Withers said: *"It appears that Mr O'Mahoney went to great lengths to avoid having his work monitored by CORGI. The investigation into the complaints against Mr O'Mahoney was difficult, but eventually I was able to issue a Prohibition Notice against him because of the imminent concern for public safety. If he illegally works on gas appliances again he could face imprisonment for breaching the notice. This case shows how important it is for members of the public to check the background of engineers who come into their homes to work on gas appliances. If like Mr O'Mahoney, they are not CORGI registered, it means that they have not had their competence checked and it also means their work is not being monitored. Poor work on gas appliances causes hundreds of serious incidents a year. I am delighted that the Judge recognised the danger to the public this case represented and agreed to our request for Mr O'Mahoney to be disqualified as a Director."* It appears that Mr O'Mahoney was briefly a member of CORGI in 1998, but his membership was cancelled after his cheque bounced. The CORGI registration number he used belonged to a legitimate CORGI engineer who traded as Gas R Us. He is an operator with a good record who, as a result of his number being stolen by Mr O'Mahoney, has received a series of complaints about unacceptable work. Anyone working on gas installations is legally required to be a member of CORGI. CORGI provides protection to consumers by assessing the competence of its members, monitoring them and taking action following complaints. Every year around 20 people are killed from carbon monoxide fumes from household gas appliances and several hundred suffer carbon monoxide poisoning. In rented properties landlords must ensure that the gas appliances are maintained and checked every year by a CORGI registered installer. Mr O'Mahoney and Gas R Us Ltd were prosecuted under the Health and Safety At Work Act 1974 and The Gas Safety (Installation and Use) Regulations 1998.

## DIRECTOR CONVICTED

Bernard O'Sullivan, the former MD of Manchester-based demolition company, Excavation & Contracting (UK) Ltd, has been found guilty of breaching the duty in s3 HSWA after a two-week trial. Mr O'Sullivan will be sentenced along with four other parties on 18 December. He was charged by HSE following its investigation into the death of David Moran, a labourer who fell 8m to his death after the roof on which he was walking gave way beneath him in September 2002. Mr O'Sullivan, , was found guilty of not ensuring that risks to non-

employees were adequately controlled. In total, five parties are being prosecuted by the HSE following this incident. The other defendants are Manchester-based Elmsgold Haulage Ltd, the company which directly employed David Moran, its Managing Director John McSweeney, their site foreman Dennis O'Connor and the Principal Contractor, Excavation & Contracting (UK) Ltd. These defendants have all entered guilty pleas to health and safety related charges and will be sentenced on 18 December too.

# KUBOTA (UK) LTD IN COURT

The HSE is prosecuting Kubota (UK) Ltd following two incidents which resulted in amputations. On 17 October 2003, Roger Adams, an employee of North West Kent College, was using the GCD360 grass collector when his hand was caught in the rotating turbine. He suffered an amputation of his dominant hand at the wrist, which later required a further 3.5 inches amputated to clean up the injury. On 23 April 2004, Stephen Sandham, an employee of Wright Landscapes Ltd, Wrexham, was using the GCD360 grass collector when his hand was also caught in the rotating turbine. He sustained amputation of his right thumb, index and middle fingers and a substantial portion of his hand. Kubota UK Ltd, based in Oxford, is charged with three offences un-

der Section 6 HSWA for supplying articles for use at work that are unsafe. Two of these offences relate to the two injuries sustained in 2003 and 2004. The third charge lists 88 instances of supply - this is all of the grass collectors supplied to Great Britain since they were initially informed of the inherent safety defects by HSE in 1999 and agreed in writing to modify the design. Kubota pleaded guilty to all three charges at Oxford Magistrates' Court on 31 August 2006, and the case was committed to Oxford Crown Court for sentencing.

When we get news of the sentencing we will report it in a subsequent bulletin. Section 6 prosecutions are unusual—and as such this case is of great interest.

---

## WHAT'S NEW?

---

### THE CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE BILL

The Corporate Manslaughter and Corporate Homicide Bill was given a second reading in the House of Commons early in October and has now moved into its Committee stage where the proposals will receive more detailed scrutiny. This is Labour's latest attempt at tackling what many accept is an absurdity in the present law which makes it more difficult to convict a corporate entity of manslaughter than an individual. Labour has been in power since May 1997 and has had 9 years to tackle this issue. Many wonder why it has taken so long to get to this stage. Of course the reality is the government has listened to the various sectional interests that have been lobbying it. Over the years we have had differing proposals to do away with what lawyers call the *identification principle*—the legal principle that requires those prosecuting a corporate entity to demonstrate that the corporate mind (in essence at least one of the directors) was culpable. We've had also had plans to add additional offences—potentially making directors more vulnerable—although those proposals have been quietly dropped. It was the hurdle of the identification principle that was key to P&Os acquittal for corporate manslaughter following the Herald of Free Enterprise disaster. The prosecution could not prove that the controlling mind was culpable following the bosun's failure to

close the bow doors. The irony being that the more complex and diverse an organisation the less likely that anyone at director level could be seen as culpable for such failings in an employee. This meant (and still means) that the smaller and more straight forward an organisation the easier it is to satisfy the identification principle and secure a conviction for corporate manslaughter. Whilst all this is all very well I do wonder just how much of the desire to see the law changed is simply political—a desire to see on the statute book an offence which overtly refers to a corporate entity being responsible for a death. Gross negligence leading to a death does give rise to individuals being convicted of manslaughter—hence the desire for companies to face the same stark reality.

Now that Labour is not bleating about "*fat cats*" quite as much as they did in the late 1990s it is perhaps little wonder that the apparent political desire to see reform has lessened. The present proposals before Parliament are the least controversial of all the measures they've suggested over the years which suggests we may, finally, see this absurdity in the law curtailed. In next months edition we'll consider what the proposals will actually do if enacted.

## NO SURPRISES FROM BUNCEFIELD REPORT

The joint Petroleum Industry and COMAH Competent Authority Task Group made up of the Industry, the HSE and the Environment Agency has called for the operators of petroleum storage facilities to take immediate measures to implement 8 key action points following the publication of an interim report following the Buncefield fire in December 2005.

For those of us with experience of health and safety or environmental related incidents in the petro-chemical industries the 8 point list contains no surprises but it is likely that what is proposed will be a significant challenge to industry.

The operators of such facilities are asked to review the operation and safety of

- Pipeline transfers;
- Tank overfill prevention measures
- The operating safety margins and level alarms;
- Fire safe shut-off valves
- remotely operated shut off valves;
- Containment - bunds and other measures; and
- Shift handovers.

I find it surprising that the list does not contain overt references to planned and preventative maintenance and inspection regimes.

The authorities are also reviewing the emerging outcomes from other studies having already been carried out nationally. The authorities are to report their findings later this year which may well include the need for industry to take further measures. The Task Group recommends and the authorities requires sites that have bulk tanks storing petroleum that could be overfilled leading to a significant vapour cloud to take immediate action. This does beg the question why the industry is in such a position in the 21st century when the risk of overfilling a bulk storage tank is a well known—and overfill protection is readily available. This has happened in an era when the price of petroleum products is high, the profits of the major petroleum producers have been stellar although those in the industry do point to the fact that the surge in oil prices is still a comparatively recent phenomena.

The Task Group will make final recommendations to industry aimed at enhancing safety and environmental standards by July 2007.

## ONE REGULATOR TO LEAD THEM ALL AND IN THE DARKNESS...?

The HSE is to become the sole regulator for all safety issues associated with electricity transmission and distribution, following transfer of part of the Department for Trade and Industry Engineering Inspectorate. The move will implement a recommendation made in last year's Hampton report on regulation.

Welcoming the move Lord Hunt of Kings Heath, minister for health and safety said, "*The transfer shows the continuing commitment to the principles of better regulation set out in last years Hampton report, it ensures that safety remains paramount whilst simplifying matters for industry by ensuring that there will now be only one safety regulator to report incidents or injuries to.*"

In 2004, the Chancellor asked Philip Hampton, Chair-

man of J Sainsbury plc, to lead a review into regulatory inspection and enforcement with a view to reducing the administrative cost of regulation to the minimum consistent with maintaining the UK regulatory outcomes. His report, '*Reducing administrative burdens: Effective inspection and enforcement*', published in March 2005, included recommendations for the HSE's role to expand to take in a number of other regulatory bodies, including the Engineering Inspectorate

Initially the transfer will be achieved through an agency agreement; permanent transfer will follow via a Regulatory Reform Order under the Legislative and Regulatory Reform Bill, which is expected to be enacted later this year.

## DOUBLE STANDARDS?

Following the decision to prosecute the Office of the Commissioner of Police for the Metropolis (aka the Metropolitan Police) for alleged breaches of health and safety law following the shooting of Jean Charles de Menezes on 22 July 2005 the Metropolitan Police Authority wrote to the Attorney-General asking him to review the decision to prosecute. A review of the decision to prosecute was undertaken; with the Attorney-General confirming that the proceedings will continue.

The police authority took the unprecedented step of publishing the entire text of its letter to the Attorney-General. The link to the letter is <http://www.mpa.gov.uk/news/prosecution.htm>.

The letter, written by Catherine Crawford—the police authority's Chief Executive to the Attorney-General contains the following illuminating passages. She asked the Attorney-General to consider the following issues.

*"First, that you reconsider whether this prosecution should proceed, or whether there is a better alternative by way of a public and less adversarial mechanism for establishing what happened on 22 July 2005 and why; and for learning the lessons from the events of that day in a manner that will engender strengthened public protection and public reassurance.*

*Second, that you initiate urgent steps, in conjunction with the Home Secretary, the Director of Public Prosecutions and the IPCC, with a view to securing the earliest possible publication of the IPCC Report, together with a full and reasoned explanation of the decisions made by the CPS as announced on 17 July in relation to the prosecution of individuals. The MPA considers that the present arrangements for publication of investigation reports and prosecution decisions have not served the family of the deceased, or the public interest, very well in this case, and that those arrangements need to be reviewed for the future.*

*Third, that you take steps, in conjunction with the Home Secretary, for a further urgent review of the application of the Health and Safety at Work etc Act 1974 to operational policing. The publication of the draft Corporate Manslaughter Bill underlines the need for a comprehensive review of a problem that has been allowed to remain unresolved for far too long."*

IPCC = Independent Police Complaints Commission

Is the Metropolitan Police Authority suggesting that there is a better way other than prosecution proceedings and that, in some way, the Health and Safety at Work Act's application should in some way be modified so far as policing is concerned?

## REACH FOR THE STARS?

The HSE is to be the UK's Competent Authority for REACH, the new European regime for regulating chemicals. Even though the regulations are yet to be agreed by the EU the HSE is already providing a helpdesk to support UK business. The helpdesk will initially provide information and advice to enquirers on REACH from the perspective of the developing Competent Authority and can be contacted on 0845 408 9575 or UK-REACHCA@hse.gsi.gov.uk

Jeff Rooker, Minister with responsibility for REACH policy, said: *"I am pleased to announce that together with my counterparts in Wales, Scotland and Northern Ireland, I have asked the Health and Safety Executive to take on the responsibilities of UK Competent Authority for the proposed new EU chemicals legislation REACH. The Competent Authority will provide advice and support to UK business for dealing with the requirements of REACH, liaise with the new European Chemi-*

*cal Agency in Helsinki and coordinate enforcement of the regulations in the UK."* The announcement was made at the UK Chemicals Stakeholder Forum meeting in Belfast on 10 October. The relevant EU regulation is having its second reading in the European Parliament this autumn and could enter into force as early as April 2007. The Regulation will require all Member States to set up competent authorities to fulfil a number of tasks including cooperation with the European Chemicals Agency on implementation of the regulation.

The UK Chemicals Stakeholder Forum is composed of 22 member organisations representative of the community of interest in chemicals in the UK. The principal function of the Forum is to advise the Government and the devolved administrations on how industry should reduce the risks from hazardous chemicals to the environment and to human health through the environment.



## Brunswicks LLP

is a limited liability partnership  
registered in England & Wales

Registered Office:

Suite 3,56 Hamilton Square

Birkenhead CH41 5AS

Registered Number OC311095

Regulated by the Law Society

Members

Andrew W Dawson, Keith M Lewin

tel 0870 766 8400

fax 0871 288 4089

email: [regreview@brunswicks.eu](mailto:regreview@brunswicks.eu)

web [www.brunswicks.eu](http://www.brunswicks.eu)

podcast hosts

[www.brunswicks.libsyn.com](http://www.brunswicks.libsyn.com)

podcast feed

[www.brunswicks.libsyn.com/rss](http://www.brunswicks.libsyn.com/rss)

# BRUNSWICKS' PODCASTS

Fancy staying up to date in your lunchtime, whilst walking the dog or whilst driving home? Make staying up to date easier by listening to our Podcasts.

Podcasts are radio style broadcasts over the internet. They are straightforward to access from any internet linked computer. All you need to play them is a computer with an enabled sound card.

You'll find our latest podcast and our complete archive at [www.brunswicks.libsyn.com](http://www.brunswicks.libsyn.com) where you can download them and play them at your pleasure. Use the categories to search for what you want. If you want to be more sophisticated and make the most of our podcasts—including being notified when a new one is uploaded use a podcast aggregator such as iTunes. iTunes is a free download from Apple at [www.apple.com/itunes](http://www.apple.com/itunes). In the Music Store you can search for "Andrew Dawson"; "Keith Lewin", or "Brunswicks" as artists and from there subscribe to our podcasts and download our podcast archive.

Once on your computer these audio files can easily be uploaded onto your iPod or mp3 player.

Incidentally Brunswicks was the first UK law firm to create podcasts.

## IN BRIEF

The HSE have been running a number of road shows up and down the country on a range of matters including:

- The risks of occupational asthma for paint sprayers—they are 80 times more likely to develop the condition than others;
- The management of back pain—including exercise sessions on the pretext that staying active assists in limiting the condition;
- Safety in farming—considered to be one of the highest risk activities in the country with around 50 fatalities a year;
- Work related illness;
- The need for high quality design and to design in safety; and
- Safety in the construction industry.

The HSE have also announced the submission of their proposed changes to the CDM Regulations and their accompanying ACoP to the Minister.

## Brunswicks' Healthcare Review

is our weekly email based service for anyone wanting to stay up to date in the health and social care sector. Its free of charge. To subscribe simply send an email to: [keith.lewin@brunswicks.eu](mailto:keith.lewin@brunswicks.eu) and ask to subscribe in the text of your email.