



## Buncefield explosion

### Fines and costs of £9.5 million

July 2010

On Sunday 11 December 2005 at around 0600hrs, a number of explosions occurred at the Buncefield Oil Storage Depot, in Hertfordshire, UK.

At least one of the initial explosions was of "massive" proportions and there was a large fire. The explosion registered 2.4 on the Richter scale, according to the British Geological Society. More than 40 people were injured. It has subsequently been calculated that 250,000 litres of petrol escaped prior to the explosion. The fire took 5 days to put out.

Today at St Albans Crown Court the following fines were imposed:

- **Total UK Limited** - £3.6 million (£3million for safety; £600,000 for pollution) and ordered to pay costs of £2.6 million
- Supply company **British Pipeline Agency Ltd** - £300,000 for environmental offences and ordered to pay costs of £480,000
- **Hertfordshire Oil Storage Ltd** - £1.4 million (£1million for safety; £450,000 for pollution) with costs of £1 million
- **TAV Engineering Ltd**, which designed a crucial safety switch that failed, - £1,000 and ordered to pay £500 costs
- Installation and maintenance company **Motherwell Control Systems 2003 Ltd** fined £1,000 and ordered to pay costs of £500

Sentencing the firms at St Albans Crown Court, Judge Sir David Calvert-Smith said: "Had the explosion happened during a working day, the loss of life may have been measured in tens or even hundreds."

### The Prosecution

The Health and Safety Executive and Environment Agency are the 'Competent Authority' responsible for regulating non-nuclear major hazardous industrial sites in England and Wales under the Control of Major Accident Hazard Regulations 1999 (COMAH). As the competent authority, the Health and Safety Executive and Environment Agency have a responsibility to investigate major incidents and ensure that lessons are learned. 5 companies were prosecuted as follows:

1. **Total UK Ltd**, pleaded guilty to three charges on 13 November 2009:
  - Between the 1st day of January 2003 and the 12th day of December 2005 Total UK Ltd failed to ensure, so far as is reasonably practicable, the health, safety and welfare at work of its employees, contrary to Section 2(1) and 33(1)(a) of the Health and Safety at Work etc Act 1974.
  - Between the 1st day of January 2003 and 12th day of December 2005, Total UK Ltd failed to ensure, so far as is reasonably practicable, that persons not in their employment were not exposed to risks to their health or safety, contrary to Sections 3(1) and 33(1)(a) of the Health and Safety at Work etc Act 1974.

- Between the 10th day of December 2005 and the 31st day of December 2005, Total UK Ltd caused polluting matter, namely fuel and firewater chemicals to enter controlled waters, namely ground waters in the chalk aquifer underlying the vicinity of Buncefield, contrary to s.85(1) and (6) of the Water Resources Act 1991.

**2. Hertfordshire Oil Storage Ltd, faced two charges:**

- Found guilty - Between the 1st day of January 2003 and the 12th day of December 2005, Hertfordshire Oil Storage Ltd failed to take all measures necessary to prevent major accidents and limit their consequences to persons and the environment, contrary to Regulation 4 of the Control of Major Accident Hazards Regulations 1999 and section 33(1)(c) of the Health and Safety at Work etc Act 1974.
- Plead guilty - Between the 10th day of December 2005 and the 31st day of December 2005, Hertfordshire Oil Storage Ltd caused polluting matter, namely fuel and firewater chemicals to enter controlled waters, namely ground waters in the chalk aquifer underlying the vicinity of Buncefield, contrary to s.85(1) and (6) of the Water Resources Act 1991.

**3. British Pipeline Agency Ltd, pleaded guilty to two charges on 13 January 2009:**

- Between the 18th day of November 2001 and the 12th day of December 2005, British Pipeline Agency Ltd failed to take all measures necessary to prevent major accidents and limit their consequences to persons and the environment, contrary to Regulation 4 of the Control of Major Accident Hazards Regulations 1999 and section 33(1)(c) of the Health and Safety at Work etc Act 1974.
- Between the 10th day of December 2005 and the 31st day of December 2005, British Pipeline Agency Ltd caused polluting matter, namely fuel and firewater chemicals to enter controlled waters, namely ground waters in the chalk aquifer underlying the vicinity of Buncefield, contrary to s.85(1) and (6) of the Water Resources Act 1991.

**4. TAV Engineering Ltd, of The Oriel, Sydenham Road, Guildford, Surrey, faced one charge:**

- Found guilty - Between the 1st day of October 2003 and the 12th day of December 2005, TAV Engineering Limited failed to ensure, so far as is reasonably practicable, that persons not in their employment were not exposed to risks to their health or safety, contrary to Sections 3(1) and 33(1)(a) of the Health and Safety at Work etc Act 1974.

**5. Motherwell Control Systems 2003 Ltd, (please note - a not guilty plea was entered by the judge on the company's behalf as it is in liquidation):**

- Found guilty - Between the 28th day of September 2003 and the 12th day of December 2005 Motherwell Control Systems 2003 Limited failed to ensure, so far as is reasonably practicable, that persons not in their employment were not exposed to risks to their health or safety, contrary to Sections 3(1) and 33(1)(a) of the Health and Safety at Work etc Act 1974.

To download audio and visual evidence heard during the trial visit  
<http://www.hse.gov.uk/news/buncefield/index.htm>

**The Health & Safety Executive and the Environment Agency said:**

"This was the biggest and most complex criminal inquiry we have worked on together - the product of many hundreds of hours of painstaking forensic investigation.

"The scale of the explosion and fire at Buncefield was immense and it was miraculous that nobody died. Unless the high hazard industries truly learn the lessons, then we may not be that fortunate in future."

Kevin Myers, HSE's Deputy Chief Executive, said:

"Incidents like the explosion at Buncefield are exceptionally rare. However, society rightly demands the highest of standards from the high hazard industries. Businesses in this sector must manage the risks they create effectively because when things go wrong, the consequences are severe and can destroy lives and shatter local communities.

"Major hazard industries must learn the lessons of events like this. From the Board room down companies must ask themselves these questions: do we understand what could go wrong; do we know what our systems are to prevent this happening; and are we getting the right information to assure us they are working effectively."

## The Fines in Context

The largest fine ever imposed in the UK for health and safety offences was in the Scottish case of HMA v Transco. A family of 4 were killed when a gas leak ignited and caused an explosion in their home. Transco were found guilty of health and safety breaches and fined £15 million in August 2005. Other large fines include the health and safety prosecution of Balfour Beatty and Network Rail in 2005 following the Hatfield rail crash which killed 4 and resulted in fines of £7.5 million and £3.5 million respectively.

Fines for health and safety offences have gone up hugely in recent years and that trend is set to continue. With the introduction of the Corporate Manslaughter and Corporate Homicide Act 2007 and the Health and Safety (Offences) Act 2008, companies can face unlimited fines and individual officers, managers and directors imprisonment for up to 2 years. Such fines are not insurable.

## International Context

As a criminal and civil FBI investigation gets underway in the USA following the Deepwater explosion in the Gulf of Mexico, health, safety and environmental issues are becoming increasingly global. For companies which operate internationally, investigators and prosecutors are now looking for evidence of poor practice, breaches and convictions across the full spectrum of a company's geographical operations. A consistent, global approach to compliance and emergency response should be put in place for international operations.

## Save the date - London seminar

Please note that this case and all other important developments in health, safety and environmental law will be discussed by a team of experts at Clyde and Co on 16 September 2010 from 4.30-6.30 pm. The panel includes Gerard Forlin QC, David Leckie, Victor Rae-Reeves and Georgina Crowhurst. To reserve a place please just reply to this email.

### Further information

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