

CLOUDED VISION

2005 proved a testing year for the energy sector even before the Hemel Hempstead oil depot fire and some of the resulting issues may not be easily resolved. **Graham Buck** reports

The fire at the Buncefield oil depot at Hemel Hempstead two weeks before Christmas had echoes of an industrial disaster more than 30 years earlier. An explosion at the Nypro (UK) chemical plant at Flixborough in June 1974 caused 28 fatalities, 36 injuries and widespread property damage. As with the more recent disaster, the toll would have been far more serious had the accident not occurred at the weekend, when far fewer staff were on site.

Similarly, Flixborough involved hundreds of third-party claims for damage to private houses, although its more rural location meant that there was not the same concentration of commercial risks in the surrounding area. Buncefield may prove to have a greater number of more costly claims from corporate third parties.

Europe's biggest fire since the war, it burned for three days, destroyed 20 giant fuel tanks and involved more than 600 fire fighters from 16 different stations.

Companies affected by the event include brewer Scottish and

Newcastle, which lost around £10 million-worth of wines and spirits, and one of McDonalds' main suppliers. Many firms had to seek alternative premises. Petrol retailers were temporarily scuppered by supply shortages and were forced to re-route tankers to avoid shortages, while pipelines supplying London's airports were also interrupted, forcing airlines to arrange alternative jet fuel supplies. Here, a settlement had to be hastily brokered by airport operator BAA to prevent a transatlantic dispute, after American Airlines and United Airlines protested that British Airways was being favoured over non-UK airlines in the allocation of rationed supplies.

Business continuity consultancy, SDPL Partnership, reported that 75 organisations suffered damage to their premises serious enough to render them unusable for an extended period, and a number faced financial ruin as a result.

Within four days, the Health and Safety Commission announced that the Health and Safety Executive (HSE) and the Environment Agency

(EA) would launch an investigation into the causes of the explosion. The HSE promised that its review would be the most wide-ranging since the fatal rail crash at Potters Bar in May 2002, and the HSC subsequently named Lord Newton of Braintree as the independent chairman of the board supervising the investigation.

The HSE, which had been scheduled to produce a preliminary report in late February, 10 weeks after the explosion, admitted the extent of the damage and lengthy work to make the site safe had prevented it from carrying out a thorough forensic examination to determine the root cause.

"While the report is inconclusive, it is regarded by many as strengthening the case for a legal liability on the part of the site operators," comments Maggie Cowing, a director at Cunningham Lindsey.

In the meantime, the HSE issued a safety alert to companies operating the UK's other fuel storage depots (numbering nearly 100) detailing a safety inspection programme to be carried out by this Easter. The HSE also reminded them that all of the sites

are required to follow the Control of Major Accident Hazards (COMAH) regulations issued in 1999.

Insurers handling claims resulting from the Buncefield fire quickly established a working group to ensure consistency and co-ordinate subrogation issues, and without the involvement of the Association of British Insurers.

Demands from some of the victims for the Home Secretary to set up a public enquiry to accompany the internal investigation have been resisted, however. In late January, it was announced that they would launch a group action against the site operator Hertfordshire Oil Storage, a joint venture between oil giants Total and Texaco. Des Collins, a senior partner at Collins Solicitors, said the claim was lodged on behalf of 40 victims, and that the total could increase to around 150. He forecast the case was likely to take around 18 months.

"Our experience is that following a disaster of this nature, the industry would normally get together and present a united front to the public and say 'look we will meet these claims', even if they do fight tooth and nail over who is liable behind the scenes," he observed. "But in this case, this hasn't happened." Hertfordshire Oil Storage responded that it had donated £150,000 to a local recovery fund and had sought to assist by creating home assistance and insurance advice telephone helplines.

Collins added that any inquiry into the fire should examine the role of the HSE and the fact that the HSE was itself heading the investigation would prevent it from being "independent and open".

There have been reports that the HSE should have been alert to serious deficiencies in the design of Buncefield. It was originally built in the late 1960s to provide Heathrow with aviation fuel and was further developed in the 1980s and 1990s with additional pipelines to transport fuel from the Humber and the Merseyside. The reports suggest the HSE, which visited the site only weeks before the explosion, could itself face compensation claims.

Impossible to foresee?

The oil industry's claim that its safety record is excellent, and that Buncefield was a one-off accident which could not have been anticipated, have also been challenged.

Industry experts cite similar past incidents, including a Dutch depot fire in 1968 involving four times as many tanks as Buncefield, and another at a terminal in Newark, New Jersey in 1983 which resulted in safety systems being upgraded. These losses suggested fire spread quickly because the tanks were closely clustered together and the proximity of those at Buncefield is likely to be reviewed.

Many loss adjusters are reluctant to discuss in any depth what Grant Thornton is calling a "very sensitive issue". The potential effect of the explosion on the loss adjusters' clients is yet to be revealed.

One of the biggest headaches is the disposal of 12 million litres of contaminated firewater. A toxic cocktail of black water, spent foam and potentially up to 40 different contaminants, according to reports it took 500 tankers five weeks to clear the site of the lethal mixture and temporarily deposit it at a sewage treatment works near Rickmansworth, Hertfordshire. There are a limited number of options, due to the presence in the firewater of perfluorooctane sulphonate, or PFOs, and the most likely means of disposal appears to be through one of the UK's two high temperature incineration sites at Ellesmere Port, Cheshire and Fawley, Hampshire.

Uninsured losses will be considerable. "The domestic aspect has received a lot of publicity, particularly in respect of possible reduction in the value of properties due to the general "blight" of the area," observes Cowing.

"Similar issues are involved in connection with commercial properties, where these losses could run into millions of pounds for individual buildings."

Cowing adds that Buncefield is an unusual major incident, in that it was clear from the outset that there was a very high probability of being

able to recover the insurer's outlay from a third party.

"We have therefore been careful to ensure that all our claim files contain sufficient information to support the amounts paid to a third party," she adds.

James Rayner, London Market director for GAB Robins, confirms "some very big claims numbers are being floated around." Limited access to many buildings surrounding the Buncefield site in the immediate aftermath of the explosion meant that first estimates of the resulting damage were too conservative and had to be revised upwards.

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"Until structural engineers are able to move in it's difficult to assess the cost," says Rayner. "We're still at an early stage regarding third-party claims, and as the HSE hasn't yet released the site, detailed forensic enquiries are still to come."

In the meantime, claims for damaged windows and tiles are steadily being resolved, but those involving the demolition of property could take several years to resolve.

Coming so soon after the heavy losses of hurricanes Katrina and Rita, Buncefield capped a particularly bad year for the energy sector.

"There has been speculation that insurers are concerned about commercial premises being located near to premises such as Buncefield," says Rayner, although the options for transferring to a less-exposed location are limited in this country.

"It's very likely the industry has been studying maps for the locations of major fuel depots, although these will show that some are in more remote areas."

He believes that, although calls for a public inquiry have so far been unsuccessful, one may follow once the HSE has completed its preliminary investigations and the government could ultimately become involved in the reinstatement process.