

AUDIT REPORT 2012/012

Request from Perit Carmel Cacopardo on behalf of Alternattiva Demokratika for an investigation on the role of the MEPA in the irregular disposal of the chemical Mercaptan by Enemalta Corporation.

An investigation was carried out in terms of Section 17C of the Development Planning Act.

Request

By means of an e-mail dated 21 May 2012, the correspondent stated:

I write on behalf of Alternattiva Demokratika.

I refer to the report carried out by the Board of Inquiry constituted in terms of the Inquiries Act (Chapter 273) and entitled Board of Inquiry into the alleged irregular disposal of the chemical Mercaptan by Enemalta Corporation.

It results from the said report dated December 2012 but published recently that MEPA was informally consulted by representatives of Enemalta Corporation accompanied by a waste management licensee duly authorized by the said corporation.

It results from the report of the said Inquiry that an informal meeting was held at the foyer of Hexagon House with a representative of the Directorate of Environment Protection.

MEPA is authorized in terms of regulation 5 of the Waste Management (Permit and Control) Regulations to take all the necessary steps, both pre-emptive and remedial, to ensure that hazardous waste is so dealt with so as not to be a threat to human health and environment.

On the basis of knowledge as to what Enemalta required, a permit for the disposal of mercaptan, which permit was sought (as per the inquiry report) even after the mercaptan was incinerated, it is requested that you investigate the operations of the Directorate for Environment Protection and in particular to establish whether the said Directorate acted in collusion with Enemalta Corporation to cover up the incident.

Facts

The facts concerning the mercaptan case as far as the MEPA was involved are listed hereunder.

2002 – 2003 Following complaints of annoying smells, the MEPA investigated the cases. It resulted from the disposal of old gas cylinders. Incidentally the contractor responsible for the works was the same contractor who eventually was commissioned by Enemalta to dispose of the surplus mercaptan.

2007 (13 August) Enemalta purchased ten 45-gallon (205 litres) steel drums of ethyl mercaptan. These were stored at the Enemalta facility in Qajjenza, limits of Birzebbuga.. (The exact date when the mercaptan was purchases is not definite).

2007 (19 September) One of the drums containing mercaptan was damaged and started to leak. The smell spread in the surrounding residential area and police action followed. The Enemalta premises were evacuated for a period. All the mercaptan was decanted into two containers which were entombed in concrete.

2009 (June) Gas leaks were again detected. It was decided to transfer the mercaptan to an Enemalta site at Corradino.

2009 (19 June) Complaints by the residents and industrial establishments in the area of strong smells. CPD was called in which identified the source and informed MEPA and other entities.

2009 (1 July) The Director of the Civil Protection Department informed the MEPA (Department of Environment Protection) that, following an investigation on complaints about heavy odours, they concluded that these smells were emanating from storage tanks containing ethyl mercaptan. The CPD requested MEPA to investigate the situation and enforce the removal of the tanks as soon as possible. Attached to the e-mail was a brief report about the chemical involved (mercaptan) which was described as a health hazard.

2009 (3 July) The MEPA was informed by the Director, DEH at MSOC-HECC, that they had been informed by the Director of the CPD that the situation had been solved. No details whatsoever very given on how the situation was actually solved, and no explanations were requested by MEPA.

2009 (possibly early July)

An official of Enemalta informed an official of the Environment Protection Department that action was being taken on a store of mercaptan that was leaking. The information was given during an informal meeting between the two officers concerned held in the foyer of Hexagon House. No records of any kind were kept of this meeting.

2009 (13-14 July) Some of the mercaptan was burned at a Benghisa quarry by a contractor appointed by Enemalta. Enemalta claims that this burning was carried out with the approval of MEPA. Due to complaints of smells the operation was stopped.

2009 (August) The remaining mercaptan was transferred to a private site (St Paul's Fireworks Factory) at Bahrija.

2009 (4 September) As the owner of the land insisted that the mercaptan be removed, a decision was taken to dispose of the mercaptan by burning. Various parts of the island experienced foul odours.

2009 (29 September) An inspection was carried out on 29 September 2009 at the Enemalta LPG storage and bottling facility at Qajjenza. The inspection was in accordance with the provisions of regulation 18 of the Control of Major Accident Hazards Regulations (COMAH), L.N. 37/2003. In the report it was stated:

Regarding the 205l drums of mercaptan which were stored at Qajjenza. Ing. Magri informed the CA that the whole quantity was disposed of by a local contractor engaged by Enemalta and that there is no more mercaptan stored at any of Enemalta's facilities.

2009 (1 October) Letter from MEPA (EPD) to Enemalta stating:

We are aware that Enemalta has a quantity of Mercaptan stored at Enemalta Qajjenza Gas Division. It has been brought to our attention that this mercaptan is no longer on site.

You are requested to forward to the undersigned the following information:

- *the exact amount in volume of mercaptan that was held by Enemalta;*
- *the location where this substance was being held and is now being stored;*
- *the containment in which it is being stored.*

2009 (9 October) A reply was received from Enemalta stating:

The Corporation in 2005 had imported eight (8) drums containing 200 litres each of mercaptan. Initially the drums were stored at the Gas Division Plant at Qajjenza. However in the beginning of 2008 the last remaining drum was moved in a controlled operation to the old underground Power Station at Corradino. In the meantime, a process was started so that this drum could be disposed of.

In July 2009, the drum stored at Corradino which was reinforced by being cast in concrete, started leaking. Therefore it was decided by a contractor commissioned by the Corporation and our technicians to destroy this remaining drum after a plan was made.

A controlled operation was held in the beginning of September 2009, whereby the remaining drum was destroyed. The operation was monitored by technicians of the Corporation and the contractor.

2009 (28 October) A letter from MEPA (EPD) to Enemalta in reply to its previous letter stating

Reference is made to your letter dated 9th October 2009 on subject in caption. This management of waste is regulated by Waste Management (Permit and Control) Regulations (Legal Notice No 337 of 2001). Your handling of this

substance without the required necessary permits constitutes a violation to this Legal Notice (et al.) which MEPA is considering pursuing in court.

You are requested to submit the following information by Tuesday, 3rd November 2009.

- *The location of the 7 drums of 200 litres each of mercaptan which were at Gas Division.*
- *Details regarding the last drum of mercaptan (including where and how the “controlled operation” was carried out). A detailed description is required.*
- *Identify the contractor that carried out the “controlled operation”.*

2009 (3 November) The Enemalta sent in its reply stating:

With regards to the three queries in your letter please note that:

- (i) *The Corporation does not have any mercaptan in its possession.*
- (ii) *The last drum of mercaptan was disposed of in Benghisa in a controlled and supervised method with the permission of MEPA and under the guidelines and co-ordination of the CPD. This was done by burning the container in a safe manner. We have to point out that we had made our utmost to dispose of the drum through licenced contractors by trying to export it abroad or incinerating it at Marsa. However, all efforts were to no avail. Therefore, when the drum started to leak again we had to take emergency action to avoid a major incident.*

The letter ended by naming the contractor who had carried out the works on behalf of Enemalta. It is to be noted that the queries of the MEPA were not answered.

No further action was taken by the MEPA on the matter. The Director, Environment Protection (who was appointed after the case had been closed) was requested to inform the Audit Office whether any further action had been taken by the MEPA, but no additional information could be given.

Board of Inquiry

An official inquiry was carried out to investigate the responsibilities of Enemalta in the disposal of the mercaptan (*Inquiry into the alleged irregular disposal of the chemical ‘mercaptan’ by Enemalta Corporation*) dated December 2011 but presented to the Minister on 23 March 2012. The Inquiry considered very briefly the role of the MEPA in the affair, but the investigation did not extend to other entities involved, including the MEPA. References to these entities were limited to their interactions with Enemalta Corporations (*see Section 3.2.4, page 4 of the report*). There are a number of references to MEPA in the report, two of which are quoted below:

EMC officials together with the private contractor reportedly met MEPA officials at Hexagon House before the disposal at Benghisa took place, to inform them about the urgent and critical situation concerning the mercaptan, referring to the profuse leakage especially of the larger concrete-casted tank and the immediate need for disposal of all tanks. EMC claims that there had been further contact

over the phone with MEPA about this matter. MEPA was already aware of the mercaptan, both through its involvement in COMAH and the regular inspections carried out by this committee at the Gas Division premises, as well as through being alerted by CPD about the recent leak at Corradino.

EMC officials involved contend that MEPA acknowledged the seriousness of the situation, tacitly agreed that incineration was the best mode of disposal in the circumstances, and even gave their verbal go-ahead to the contractor to incinerate the larger tank holding concentrated mercaptan at Benghisa. EMC also informed the contractor to try to obtain MEPA's approval in writing, albeit apparently the day after the burning disposal of this tank with mercaptan at Benghisa had already been carried out. The EMC officials also claimed that at no stage did MEPA request to make an inspection, detail the requirement for written permits from EMC, or offer assistance in the disposal operation. It certainly did not give any definite 'no' and, on its part, EMC seemingly panicked and felt that the situation could not wait any longer. On its part, MEPA acknowledged that an informal meeting took place apparently in the foyer of the MEPA premises with an EMC official who informed about the situation with the mercaptan. However, MEPA contends that it did not give verbal authorization or any other type of go-ahead for the burning of the mercaptan and that the EMC official was advised to consult with CPD. MEPA also claimed that no application for a consignment permit was made to it or approved by it. Similarly no consignment note was prepared or approved. It was noted that a distinction had to be made whether the material was considered a public safety risk or a national emergency, in which case CPD would overrule. MEPA would be the regulatory authority in charge in this case only if the disposal had to be of a material considered as waste.

(pages 10 – 11)

With the increase in the leakages of mercaptan at the EMC facilities, it appears that EMC started considering the disposal of mercaptan as an emergency situation. In cases of emergency, Regulation 5 of the WMR stipulates that MEPA shall take all the necessary steps, pre-emptive or remedial, to ensure that waste, particularly hazardous waste, is so dealt with as not to constitute a threat to human health or the environment. Where the person responsible for the waste is unable to or fails to take the necessary steps to remove such a threat, MEPA is empowered to intervene and take such action as it deems necessary to remedy the situation.

The BOI did not receive any evidence supporting the fact that EMC or its contractor applied to MEPA for a permit in terms of the WMR. Although there is evidence suggesting that officials from MEPA were verbally informed of such proposed waste management activity, it cannot be legally held that such information amounts to a 'permit'. Furthermore, although stated by EMC officials to have been the case and however plausible such a claim is, there is no tangible proof that MEPA was consulted on the basis that the disposal of mercaptan was an emergency situation.

From this inquiry, it could not be ascertained that MEPA gave any conditions, steps or instructions to EMC at the time on the disposal of this substance in terms of Regulation 5 of the WMR. However, during the course of this inquiry MEPA informed the BOI: “Under the provisions of LN 337/2001, the proper disposal of mercaptan would require that this be safely packaged and sent to a facility permitted of the disposal of such materials; given that no facilities are available in Malta for such a purpose, export to a facility with the EU is the only legitimate option. The storage of mercaptan at Enemalta was never formally described as a waste, as the material could conceivably be exported as a viable product – albeit hazardous – to any facility able to receive and make use of the substance ... In the circumstances where substances may prove to be a danger to public health and safety, the primary concern is the proper securing of the material. This should ideally focus on safe containment, but if necessary could involve the destruction of the material if safe containment is not considered a viable and safe alternative.”

The findings of the Board of Inquiry were discussed with an official of the Department of Environment Protection of the MEPA. It was noted that the investigations could not come to definite conclusions regarding the volumes of mercaptan handled, and whether it was technically possible for the material to be properly contained (for example in a new container, in which case it could have been stored indefinitely). The claim with respect to an emergency was plausible. However, given the Board of Inquiry findings as to how Enemalta finally disposed of the mercaptan early in September 2009 (and then only after the insistence of the owner of the land where the mercaptan had been deposited) implies that the final disposal of the mercaptan was illegal.

Comments

It is sufficiently clear from the above that Enemalta was primarily and directly responsible for the situation as it evolved. It had stored, handled and transported a hazardous substance contrary to established procedures as required by law. However, MEPA cannot be held blameless in the circumstances.

MEPA had been dealing with Enemalta in the disposal of hazardous materials for a substantial period of time. It knew that Enemalta had full knowledge and experience in the procedures which had to be adopted in a similar situation. It was, therefore, reasonable that MEPA officials assume that in the case under consideration Enemalta would follow the approved policies.

It is clear that this assumption was possibly the reason for the result of the informal meeting held at Hexagon House in the beginning of July. It was simply a case of insufficient information being passed to the MEPA official. It is impossible to ascertain what was said at this meeting, but a tacit recognition (albeit on insufficient grounds) that an emergency situation existed was considered adequate for Enemalta to assume the approval of MEPA for the operation which followed.

On July 1, at the latest, MEPA knew that Enemalta had considerable amounts of mercaptan which, at this stage, were being considered as waste which needed to be disposed on. The Director of Civil Protection had informed MEPA by means of an e-mail

that the leaking mercaptan constituted a health hazard and requested prompt action. Yet no action seemed to have been taken and the case closed when two days later the CPD and the Health Department informed MEPA that the problem had been solved. Nobody considered it appropriate, at least, to question how the problem had been solved. Obviously it was possible that the situation had really been solved, e.g. the mercaptan had been decanted into proper safe containers and stored in an appropriate place for proper disposal at a later date.

The fact that the situation had not really been solved became apparent a few days later during the meeting at Hexagon House. Indeed at this stage, Enemalta seemed to be in a state of panic. It had to dispose of a potentially hazardous material and did not have the means to do so. It is understandable that an official who has to deal with many such cases on a daily basis would consider a chance meeting as being simply a request for advice and he duly tendered the standard answer (at least as was stated by this official). In case of emergencies the most important criterion was safeguarding public health and safety and the CPD was the regulatory authority. It is obvious, however, that the mechanism which alerts the MEPA for possible environmental damage by the leakage of chemical hazards in the environment did not function properly. It should have been obvious at this stage that there was a problem which needed attention, but nothing was done about it.

It was only following the COMAH report that suddenly it became all too clear that something was wrong. By this time, Enemalta had believed that it had solved the problem. It had disposed of all the mercaptan it had in its possession by burning it. It had issued a vaguely-worded press release to explain away the smells experienced in many parts of the island and the case should have been forgotten. Unfortunately for Enemalta, MEPA finally put two and two together and started asking questions. But no answers were forthcoming from Enemalta. The questions of the MEPA were left unanswered, and MEPA seemed to be perfectly happy and the whole case was closed.

It was only a chance investigation by a journalist two years later that finally exposed what had happened. And this is the most serious concern in all this sequence of events – they are nothing more than a blatant attempt to hide from the public that an event with negative environmental, and possibly, health consequences had taken place. The events became public only because the material concerned was so smelly that all the precautions taken by Enemalta to try to conceal what was happening were of no avail and a chance journalist who decided to investigate. I question what would have happened had the material being disposed of did not smell and could not be detected by the public? Is it possible that persons, including public corporations, are disposing of hazardous and possibly toxic materials in the environment creating health hazards to the public? The events surrounding the illegal disposal of mercaptan do not give any reassurance.

There are a number of persons in the MEPA who are much more competent than the undersigned in their understanding of the problems of the disposal of hazardous wastes in the environment which frequently leads to serious health problems to the general public. The limited resources at their disposal make them equally conscious of the fact that they cannot control everybody at all times. Consequently the deterrent factor of the legislation can be more important than the actual enforcement of regulations. The MEPA should therefore adopt a policy of zero tolerance with respect to environmental damage. The full powers given to MEPA by the law should be used against those persons including

Government corporations who break the law. I would also recommend that such events be given full publicity as such publicity is an additional deterrent.

Conclusions

1. The MEPA failed its statutory obligation to take effective action against Enemalta for breaching the provisions dealing with the disposal of hazardous waste. The MEPA can be excused, in part, as the disposal of such wastes by Enemalta was a regular occurrence and it is reasonable to accept that the MEPA would assume that standard procedures would follow.

2. The MEPA should advise its officials that any indications whatever their source of possible environmental damage with or without consequent health hazards would be followed up and a reported case should only be closed when the matter had been settled in accordance with official policies and good practice to the satisfaction of the MEPA. Where appropriate, the MEPA should not hesitate to prosecute offenders, even if these are Government bodies.

Joseph Falzon
Audit Officer

30 July 2012