

**Engagement and Policy  
Division**

Mr. Stephen J. Nicholls  
HM Assistant Coroner for Dorset  
The Coroner's Office for the County of Dorset  
Bournemouth Town Hall  
Bournemouth  
BH2 6DY

[REDACTED]

Health & Safety Executive  
Mallard House  
3 Peasholme Green  
York YO1 7PX

Monday 10<sup>th</sup> October 2022

[REDACTED]

Your Reference: 23785928  
Our Reference: TRO/0421116/22

[REDACTED]

Dear Mr. Stephen Nicholls,

Thank you for your Regulation 28 report in relation to the death of David Stefan Honor, dated 30<sup>th</sup> August 2022. Your report was addressed to the Home Office and the Department for Levelling Up, Housing and Communities, but was transferred to the Health and Safety Executive as a number of your concerns touch on areas for which we have responsibility.

Before I address your concerns, may I take this opportunity to express my condolences regarding the tragic circumstances that gave rise to the report.

Your report highlights the following areas of concern:

- (i) Members of the public are able to purchase or acquire Oxygen Free Nitrogen (OFN).
- (ii) These products should be licensed.
- (iii) There is no colour coding of gas cylinders to assist first response emergency services.
- (iv) Whether the safety information on these gas cannisters is clear and sufficient.

A full response which addresses the above concerns and sets out applicable cross-government policy is provided below. I hope this information reassures you as to the seriousness with which we treat these types of incident.

**Purchase and licensing of oxygen free nitrogen products**

Under the retained Regulation (EC) No. 1907/2006 concerning the registration, evaluation, authorisation and restriction of chemicals ('the UK REACH Regulation'), it is possible to place restrictions on a chemical substance, which limit or ban the use of the chemical or its placement on the market within Great Britain. Restrictions under UK REACH are reserved for chemicals for which the associated risks have been deemed unmanageable.

As a chemically inert substance that is not intrinsically toxic to humans or the environment and cannot support combustion, OFN poses a minimum risk. As such, OFN is not restricted for supply or use under the UK REACH Regulation and is available for sale to consumers.

OFN has a number of legitimate applications which warrant its availability on the GB consumer market. Such applications include pressure testing and leak detection in air conditioning units; automotive tyre inflation; and use in relation to beverages as a propellant.

The UK has a robust legislative framework to protect UK consumers from unsafe products. The General Product Safety Regulations 2005 require all products to be safe in their normal or reasonably foreseeable usage and enforcement authorities have powers to take appropriate action when this obligation is not met. There is also sector-specific legislation where manufacturers and businesses have specific obligations to ensure they are supplying safe products. This includes the Simple Pressure Vessels (Safety) Regulations 2016 and the Pressure Equipment (Safety) Regulations 2016, as they apply to Great Britain.

In Great Britain, local trading standards authorities have a duty to enforce the Regulations in relation to consumer goods, i.e. those intended for private use or consumption.

### **Colour coding of gas cylinders to assist first response emergency services**

Your report does not contain details regarding the colouring of the gas cylinder found in Mr. Honnor's vehicle. I have understood concern 2(iii) to mean that you are concerned that there is no system of colour coding in place for gas cylinders, and that such a system that would be of benefit to first response emergency services.

A harmonised standard, BS EN 1089-3, exists across the gases industry in Europe (including the UK) and governs the colour coding of transportable gas cylinders. This colour coding system provides a method by which to easily identify the contents of a gas cylinder primarily via its properties, particularly in an emergency situation.

Under BS EN 1089-3, some gases have a designated colour associated with them. Nitrogen is one such gas—BS EN 1089-3 requires gas cylinders containing nitrogen, and therefore OFN, to be coloured black. Please note that with the exception of acetylene and hydrogen gas cylinders, colour coding in line with BS EN 1089-3 will only apply to the shoulder of the gas cylinder.

### **Safety information on gas cannisters**

The label located on the shoulder of a gas cylinder is intended to be the primary method of hazard identification. The label should contain mandatory information required under legislation such as the retained Regulation (EC) No. 1272/2008 on the classification, labelling and packaging of substances and mixtures ('the GB CLP Regulation'), for which HSE, as the GB CLP Agency, has responsibility.

Your report notes that the gas cylinder found in Mr. Honnor's vehicle contained the following labelling: *oxygen free nitrogen*; warnings of *gas under pressure*, *odourless* and *asphyxiation—do not inhale*, *non-inflammable* and *non-toxic gas 2*; and an emergency phone number. This suggests a level of compliance with the GB CLP Regulation.

The GB CLP Regulation facilitates a high level of protection of human health and the environment through the use of effective, harmonised hazard communication. The Regulation requires suppliers to provide hazard information through labelling before their substance or mixture is placed on the GB supply market. Such hazard information will be in the form of, but not limited to:

- Hazard pictograms;
- Signal words (e.g. warning or danger);
- Hazard statements (e.g. gas under pressure); and
- Precautionary statements (e.g. in the case of gases under pressure, store in a well-ventilated place).

In your report, concerns were raised as to whether the safety information on gas canisters is clear and sufficient. Your report does not detail the nature of the OFN gas cylinder found in Mr. Honnor's vehicle, and as such I am unable to comment on whether the cylinder was fully GB CLP-compliant and thus, whether safety information was displayed on the cylinder to a sufficient degree.

The domestic legislative framework around hazardous chemical substances provides an additional method of safety information communication. Whilst OFN is not restricted under the UK REACH Regulation, Article 31 of the Regulation does apply to OFN and requires the supplier of a chemical, whether a manufacturer, importer, downstream user, distributor or a representative, to provide customers with a Safety Data Sheet (SDS) if the chemical they supply is hazardous. In a workplace setting, the requirement to provide an SDS is also mandatory under the Control of Substances Hazardous to Health (COSHH) Regulation 2002, if a chemical product containing hazardous substances is being supplied.

SDS provide information on chemical products that help users of those chemicals to make a risk assessment. They describe the hazards the chemical presents, and give information on handling, storage and emergency measures in case of accident.

In relation to your concerns about the clarity of safety information on gas cylinders, the Department for Business, Energy and Industrial Strategy have advised that sector-specific legislation places obligations on actors within a supply chain to provide instructions and safety information that are clear, legible and in easily understandable English.

I hope this response helps to address the concerns set out in your report and explains our position.

Yours sincerely,

  
Classification, Labelling and Packaging Policy Team Leader