

Hong Kong Occupational Safety and Health Association

To: The Hon Ronald Arculli
Chairman, Bills Committee of Legislative Council

Comments on the proposed Factories and Industrial Undertakings (Safety Management) Regulations

1. Introduction

1.1 We generally support the proposed Regulations to accelerate the establishment of a recognized safety management system and practice in each relatively hazardous industrial undertaking, with the ultimate goal of reducing the occurrence of accidents.

1.2 There are, however, a number of areas in the proposed Regulations that are regarded as unsuitable or contradictory to the purposes of the Regulations. For example, the penalty of imprisonment; appointment of internal auditors; “grandfather's rule” for auditors; auditors' reports as evidences in courts; and unspecified qualification for Safety Review Officers. Details are given in the following paragraphs.

2. Imprisonment penalty

Safety Management, unlike technical requirement for safety, is difficult to measure. Whilst the latter can return with a definite “YES” or “NO” as the provision of barriers to a floor edge, the former is difficult to assess on its level of compliance, e.g. the development, implementation and maintenance of a safety management system (Regulation 8). With such, we feel that **imprisonment sentence in failing to comply with these regulations makes it difficult to enforce and serve no useful purpose.** After all, the concept behind this regulation is “self regulatory” and the heavy penalty may not be in line with the spirit of the whole exercise. We propose that **financial penalty will suffice.**

3. Characteristics of Construction Industry

Whilst the Regulations is written with an ultimate intention to apply to all industries, the immediate target is no doubt the construction industry. The unique characteristic of the construction industry must therefore be taken into consideration when drafting the regulations to avoid ambiguity and misunderstanding, such as **multi-work locations, fluctuating work-force, large turn over of workers, etc.**

A practical example will be the requirement of at least one safety committee for **each construction site** operated by a contractor, and the requirement of more frequent meetings for each such committee, instead of the proposed “at least once every 3 months” (Regulation 11.1(c)).

Similarly, the requirement of a safety audit for not less than once in each six months period (Regulation 13(2)(a) shall be specified for **each construction site** having an aggregate of 100 or more workers in a day.

3. Independence of Safety Auditors

The Regulations allows the proprietor to appoint his own employee who are Registered Safety Auditor or Safety Review Officer to conduct the safety audit, and only requesting them not to carry out other work of a nature of to the extent that would prevent the efficacious conduct of the audit (Regulation 14(b)). This is in fact not a restriction at all because such involvement can never be proved.

An employee who is a Registered Safety Auditor can conduct internal audit as often as he likes, but an official audit with a report going to the Authority must and should be conducted by an independent person to ensure honest, fair and unbiased reporting. This will also avoid conflict of interest where a safety officer has to audit his own employer and the report will go to the enforcement authority. How embarrassing! **We strongly propose that the auditor / review officer must not be an employee of the company and should declare that he has no interest in the company or contractor he audits.**

4. Grandfather's Rule for Safety Auditor

In Schedule 1, item 3, we **do not agree** that application to be safety auditors within six months of the commencement of the regulations can be exempted from the possession of specified qualifications as a Registered Safety Officer and experience. This will create a batch of **under-qualified auditors**. If sufficient grace period is given before the commencement of the Regulations, there should be sufficient time for potential auditors to acquire the necessary qualification.

5. Qualification for Safety Review Officer

There is no specific safety qualification and training requirement for Safety Review Officer and this is unreasonable. The only checkpoint is for the Commissioner to request him to be replaced. This is clumsy and inefficient. We propose that the **safety qualification for Safety Review Officer** should be specified in the first instance.

6. Safety Audit Reports or Safety Review Report as Court Evidence

The captioned Reports will have to be submitted by a proprietor or contractor, or a Registered Safety Auditor or Safety Review Officer, on the request of the Commissioner for Labour. If there is any prosecution related to safety management, the proprietor or contractor will be placed in a very unfavourable situation since **every such audit or review report is a reveal of certain inadequacies in safety management!** We strongly propose that the Regulations shall provide that **any such audit or review report shall not be produced as an evidence in court in the proceeding of any prosecution related to safety management.**

7. Notification of A Safety Audit

Under the proposed Regulations, it will be the duty of a proprietor or contractor to appoint a safety auditor. If a notification to the Commissioner for Labour is required, the duty of such notification should be similarly placed on the proprietor or contractor, instead of the appointed Registered Safety Auditor (Regulation 18).

Conclusion

We hope that the above opinions and recommendations will be seriously considered and adopted in finalizing the proposed safety management regulations. We would like to emphasize the need to remove the imprisonment penalty; to appoint independent safety auditors; to remove the grandfather's rule for Registered Safety Auditor; and to prohibit the use of the relevant safety audit or review report as evidence in court by the prosecution.

W Y Wong
President