Paper No. CB(2)2131/98-99(02)

Hong Kong Occupational Safety and Health Association

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

May 26, 1999

Comment on the Administration's Response to the Submissions regarding Factories and Industrial Undertakings (Safety Management) Regulations

1. Introduction

1.1 We refer to the captioned Response, Paper No. CB(2)2007/98-99(01), and find that many of the critical views forwarded by the safety organizations being consulted in this respect had not been seriously considered by the Administration. These include:

(a) Not to impose imprisonment penalty;
(b) Proprietors to appoint independent safety auditors;
(c) Delete the lower qualification requirements for safety auditors at the initial stage of registration; and
(d) Prohibit the use of safety auditing or safety review report as evidence in court by the prosecution.

1.2 In view that the above points are crucial to the effect and success of the safety management regulations, we could not but re-iterate the rationales behind these points in the following paragraphs.

2. Imprisonment Penalty

This heavy penalty has been found in safety regulations involving conditions with more hazardous natures, and in the General Duties provision in the Factories & Industrial Undertakings Ordinance. For example, a contractor who is found not providing guard-rails for a working platform will be liable to the penalty of imprisonment under Regulation 38N of the Construction Sites (Safety) Regulations. Alternatively, or additionally, he may be found guilty of breaching the General Duties, and be liable to the penalty of imprisonment under Section 6A
of the Factories & Industrial Undertakings Ordinance. Since the failure to provide a guard-rail is more or less involving some inadequacy in certain aspects of "safety management", the contractor will fall into the third chance of being jailed if there is such provision in the safety management regulations.

Is imprisonment penalty still necessary for the "software" of a safety program, namely safety management, if it has already been provided in the "hardware" part, namely the physical provision of guard-rails; and in the "semi-software" part, namely the safe system of work (General Duties)?

As quoted by the Administration in Para. 40 of the Response Paper, would the failure of establishing a safety committee, or failure of countersigning a safety audit report justify an imprisonment penalty?

3. <u>Independence of Auditors</u>

By virtue of the requirement that the auditing reports may be forwarded to the Commissioner for Labour, any internal auditors will be subject to the pressure of their employers to produce "no adverse" reports, thus defeating the purpose of the auditing system. For the safety audits to be meaningful and effective, independent auditors must be appointed.

4. <u>No Downgrading of Qualification for Safety Auditors</u>

We oppose the lowering of qualification requirement for safety auditors in the initial stage of registration for the following reasons:

(a) The registration of safety auditors represents the creation of a new qualification for job opportunities or advancement, and the assessment of a professional competence in respect of safety auditing. It is therefore most essential that such qualification and assessment criteria are to be kept at a consistent level.
(b) Manpower supply should not be taken as an excuse to produce two batches of safety auditors of different standards.
(c) We do not think that an 18 months of full-time experience in a managerial post responsible for industrial safety and health will be sufficient for qualifying as a safety auditor.

5. <u>Audit Reports As Evidence By Prosecution</u>

"Safety Auditing" may be regarded as a tool to regulate any deficiency in safety management. As such it shall not be placed in the risk of "backfire" a user, the circumstance when audit reports are to be used by the prosecution as evidence of any sub-standard safety management on the part of a proprietor.

An example from safety inspection will best illustrate this. A proprietor has carried out an inspection and finds that a machine was unguarded for a certain reason. He records the deficiency and proceeds to fix it up. Later, the authority inspector comes and reveals the deficiency from the inspection report kept by the proprietor. The authority then takes out a charge based on the inspection report of the proprietor. Would it be ridiculous?

6. Further Comments

6.1 Safety Committee — The proposed composition of the Safety Committee, having not less than half the members of the committee represent workers, may create tension in respect of labour relation. Since it has been the intention of the Administration to provide the duty holders with flexibility in devising and implementing the process elements to achieve the goal of an effective and safety system of work as they deem fit (Para. 26 of the Administration's Response Report), the composition of Safety Committee should also be more open. For example, the Committee may have at least two workers' representative, but the ratio is not to be specified.

6.2 Circumstances for Inspecting Safety Audit or Safety Review

The proposed Regulation 33 provides the Commissioner with the power to inspect the conduct of any safety audit or safety review. A condition should be added in subsection (4) of Regulation 33 that such power should only be exercised when there is evidence that a report of safety audits or safety review has not reflected the actual performance of the industrial undertaking.

7. Conclusion

We hope the Bills Committee will re-consider all the above important points seriously. The purpose of the proposed set of Regulations is to assist the industries in establishing or upgrading their safety management systems, but is not to the extent that it will create threats, troubles, and conflicts to the management personnel of the industrial undertakings.

(End)

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