

THE TURNING POINT

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The Vision of the Turning Point

This newsletter is to inform you of recent changes and trends regarding health and safety. The Turning Point is a monthly newsletter covering topics from various industries and sectors. The Turning Point will respond to your inquiries and inform you of current services and updates regarding Raising The Standard Consulting Inc. (RTSC).

PRE-START HEALTH AND SAFETY REVIEWS

By Andrea Pitts, P.Eng.

In October 2000, the Ontario government released its revised version of section 7 of the *Regulations for Industrial Establishments (Reg. 851)*. This section now specifies the requirements for Pre-Start Health and Safety Reviews (PSHSRs), which replace the Pre-Development Reviews (PDRs) required in previous versions of this section. This amendment is meant to clarify the responsibilities for the examination of new or modified equipment, machinery and devices. It is also meant to specify which situations will require such a review, the persons qualified to conduct them and the documentation necessary. These requirements became effective on October 7, 2000 and the Ontario government released their "Guidelines for Pre-Start Health and Safety Reviews: How to Apply Section 7 of the Regulation for Industrial Establishments" in April 2001.

The intent of section 7 is to ensure the protection of

workers by requiring a professional review of hazards prior to the use of new or modified equipment, machinery and devices. According to the guidelines "A Pre-Start Health and Safety Review includes a written report on the construction, addition or installation of a new apparatus, structure, protective element or process, or modifications to an existing apparatus, structure, protective element or process". This report is meant to detail what measures and controls are necessary to ensure compliance with the requirements in the *Regulation for Industrial Establishments*. This review should be conducted at the design stage and must be completed before start-up.

Section 7 requires that a PSHSR be conducted when "a new apparatus, structure or protective element is to be constructed, added or installed or a new process is to be used". It also requires a review when modifications are made to existing equipment, structures, processes and protective elements when:

1. New or modified engineering controls are used.
2. Other new or modified measures are used.
3. A combination of new, existing or modified engineering controls and other new or modified measures is used.

In order to determine if the equipment, structure or process in question is applicable for this type of review, the regulation gives a Table of eight circumstances, which would require a PSHSR. These circumstances include:

- areas where storage and dispensing of flammable liquids occurs
- guarding



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- racking or stacking structures
- processes with risk of ignition or explosion
- factories producing aluminum or steel or that melt material or handle molten material
- lifting devices, travelling cranes or automobile hoists
- processes which use or produce a substance that may result in a workers overexposure (above the occupational exposure limits)

A review is not required if the equipment, process, protective element or structure does not fit into one of these eight categories.

In order to aid in the determination of if a PSHSR is required or not, the guideline includes a number of flow charts which ask several Yes/No questions. These flowcharts walk you through questions regarding your facility, determining if a provision from the Table applies, clarifying if it is new or existing equipment, checking if one of the exemptions may apply, ensuring documentation to support an exemption is available and finally, defining if a PSHSR is required or not.

If you determine through this process that a PSHSR is not required, documentation establishing the exemption must be readily accessible in the workplace. If it is determined that a PSHSR is required, it must be conducted by a professional engineer if it relates to items 1-7 of the Table. If it relates to item 8, a professional engineer or a person who possesses special expert, professional knowledge or appropriate qualifications to assess the hazards must conduct it. This would mean a professional person such as a Certified Industrial Hygienist (CIH) or Registered Occupational Hygienist (ROH).

The Pre-Start Health and Safety Review is to be documented in a written report which details:

- the measures that must be taken to ensure compliance with the regulations
- any testing required prior to use and measures to protect workers health and safety before the testing is carried out
- details of the structural adequacy of the apparatus or structure

- date and signature of the reviewer
- the seal of the professional engineer or if conducted by another professional, details of their special expert knowledge or qualifications

This report must be kept readily accessible in the workplace with any additional supporting documents and be provided to the Joint Health and Safety Committee (JHSC).

According to subsection 7 (3)(a), the apparatus, structure, process or protective element cannot be operated or used until “all measures identified in the review as being required for compliance with the relevant provisions of this Regulation that are listed in the have been taken”. However, 7 (3)(b) goes on to say that if some of the measures are not taken, written notice must be provided to the JHSC of what measures have been taken to comply with the relevant requirements of the regulation. This allows the employer an opportunity to use other measures provided that they still comply with the applicable provision in the Table and meet the equivalency provision in section 2. This equivalency provision means that if a physical device is required it may be substituted with another physical device but not a procedure or other administrative control instead. For more information on Pre-Start Health & Safety Reviews, please contact us at 905-840-1918.

Bill C-45: Received Royal Assent November 7, 2003

Bill C-45, an act to amend the Criminal Code, received Royal Assent November 7, 2003.

Bill-C45 has amended the criminal code to clearly define who is responsible for the safety of persons in the workplace and to allow for prosecution under charges of “criminal negligence” when those responsibilities are recklessly or wilfully disregarded.

The amendment states that:

“Everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task. “

This would include directors, executive officers, operations managers, plant managers, production managers, and so on. These are the people with authority to make decisions about day-to-day operations.

It also states that an organization is a party to an offence, if a “representative” commits an offence while acting within the scope of their authority, and the senior officer(s) of the organization depart “markedly” from the standard of care that would have prevented the offence from occurring. A representative is defined as “a director, partner, employee, member, agent or contractor of the organization”.

This clearly indicates that organizations can and will be held responsible for the actions of all of their employees, and for their lack of action.

Departing from the standard of care necessary to prevent a serious accident or injury could be as simple as not arranging appropriate training, not insisting on documented safe work practices, or simply not holding supervisory or management staff accountable for their responsibilities. If you have enough authority to control how an operation runs, and you choose to allow someone else to take care of it without taking steps to ensure they do it properly, you leave yourself vulnerable.

Under the Occupational Health and Safety Act, an individual found guilty of a contravention may be fined up to a maximum of \$25,000 and/or sentenced to up to one year in jail, per offence. The fine for a corporation can be up to \$500,000.

Fines under the criminal code in an indictable offence have no predetermined limit. **The maximum sentence for an individual convicted of “criminal negligence causing death” is life imprisonment.**

Even when maximum fines or imprisonment are not the result, the stigma that comes with a criminal code conviction, and the resulting permanent criminal record, will hopefully be more of a deterrent than the current system has been able to accomplish.

Employers must take these responsibilities seriously. They need to review their existing policies and procedures, training requirements and budgets, and the dedication of their employees to a safe workplace, and make changes where changes are needed. Where good programs exist,

they need support, encouragement, and more than just lip service. The benefits of a good program are many, the cost of a poor one; far too high.

This article is an example of the recent trends in Ontario regarding health and safety compliance. Let RTS Consulting Inc. assist you in identifying where you stand to ensure your compliance.

RECENT FINES FROM MINISTRY OF LABOUR

Ministry of Labour Season Garment Inc. Scarborough, ON

SCARBOROUGH, ON, Nov. 18 /CNW/ - Season Garment Inc., a Toronto garment factory specializing in women's clothing, was fined \$6,000 and a company director was fined \$3,000 on November 13, 2003 for one violation each of the Employment Standards Act, 2000 involving the posting of a poster.

On December 12, 2001, a Ministry of Labour employment standards officer visited the garment factory on Spadina Avenue in Toronto and asked the employer to post a required poster at the workplace. The poster informs employees and employers of some of their rights and obligations under the Employment Standards Act, 2000. Following the visit, the officer issued an order under the act requiring the employer to post the poster by January 18, 2002. During a follow-up visit on February 8, 2002, the officer noted the poster had not been posted.

Season Garment Inc. pleaded guilty to failing to post the poster, as required by Section 1 of the Regulation for Posting of Information Concerning Rights and Obligations (Regulation 290/01) and Section 2(1) of the Employment Standards Act, 2000.

A company director pleaded guilty to failing to comply with the employment standards officer's order requiring the posting of the poster. This was a requirement of Section 2(1) of the act.



The fines were imposed by Justice of the Peace James Bubba of the Ontario Court of Justice at Scarborough. In addition to the fines, the court imposed a 25-per-cent victim fine surcharge, as required by the Provincial Offences Act.

**Ministry of Labour
Jodno Limited
Toronto, ON**

TORONTO, Nov. 6 /CNW/ - Jodno Limited, a Toronto-based company that owns two industrial buildings and leased a third in Toronto, was fined \$100,000 on November 3, 2003 for a violation of the Occupational Health and Safety Act that resulted in the death of an employee.

On January 10, 2001, four labourers were clearing material and debris from a yard at the back of a vacant building when one of the workers was struck by a reversing truck. The worker died as a result of the injuries. A Ministry of Labour investigation found the truck driver was not assisted by a signaller as the driver drove in reverse. The incident occurred at 40 Wabash Avenue in Toronto.

Jodno Limited pleaded guilty, as an employer, to failing to ensure the operator of the truck was assisted by a signaller, as required by Section 104(3) of the Regulations for Construction Projects. This was contrary to Section 25(1)(c) of the act.

The fine was imposed by Justice Patrick Sheppard of the Ontario Court of Justice at Old City Hall in Toronto. In addition, the court imposed a 25-per-cent victim fine surcharge, as required by the Provincial Offences Act.



Past Newsletters

Please feel free to pass our newsletter to anyone you feel may benefit from the information.

Also, if you are receiving *The Turning Point* for the first time, you may be interested in our last newsletters on Aggressive/Violent behaviour, Machine Guarding Safety and Legislative Changes in WSIB Policy, Construction Safety Regulations. Please contact us for a copy.

Training

The following is an example of a few of the training courses we are offering in the upcoming months. For a full listing, please visit our web-site at www.rtsconsulting.com

Fall Arrest Training

\$70.00 +GST per person, minimum of 15 people, can be conducted after hours at your worksite, if you prefer.

Transportation of Dangerous Goods

\$80.00 +GST per person, minimum of 10 people, to be conducted on-site.

JHSC Certification Part 2 Training

\$50.00 +GST per person per module

JHSC Certification Part 1 Training (3-day Course)

\$299.00 +GST per person

For assistance in “raising the standard” of environment, health and safety in your organization, contact us at (905) 840-1918, visit our website at www.rtsconsulting.com or email us at rtsc@rtsconsulting.com



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