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Gareth Crosby
Health and Safety Executive
5S.1 Redgrave Court
Merton Road
Bootle
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Dear Gareth,

Consultation on proposals to review HSE's ACOPs

I am responding on behalf of the Office of Rail Regulation (ORR) to your recent consultation on HSE's proposals to review its Approved Codes of Practice (ACOPs).

Our key area of concern relates to the proposed withdrawal of ACOP L21 (Management of Health and Safety at Work) and its replacement by more specific, updated guidance.

We note that this withdrawal is proposed because L21 is considered to be too generic and does not provide the practical guidance required by ACOPs. We disagree with this view. This ACOP was instrumental in creating the well-established test of how to conduct a suitable and sufficient risk assessment on which we relied in a recent high profile level crossing investigation and successful prosecution. Without the special legal status afforded to the ACOP in providing this test the case in question would have been much more difficult to prove. In our view the ACOP:

- provides a crucial tool to explain the law and enable the control of more complex risks;
- provides certainty for duty holders by setting out preferred methods to achieve compliance and clarifies what is required by terms such as suitable and sufficient or adequate;
- sets out the precision required in the approach to controlling the risks; and
- ensures that a consistent approach to risk assessment is taken both by duty holders and regulators,

and it enabled us to distinguish between the specialist knowledge required to produce a particular risk assessment rather than using a simple risk matrix.

In sectors such as the railway industry, where failure to adequately address risk can result in multi-fatality incidents, suitable and sufficient assessments are a critical

element of managing risk and the reliance on this ACOP for both duty holders and the regulator is more pronounced. Withdrawal of the ACOP would also leave the issue of “suitable and sufficient” open to more debate and uncertainty for businesses in what they need to do to comply.

While we would expect to work with you to make sure that any new guidance would specifically address our needs, a question could remain over the perceived lack of weight and legal status of such guidance when compared to the existing or revised ACOP. This might leave businesses vulnerable to alternative, and more costly, expert opinions and arguments.

We are concerned that in losing the special legal status of the ACOP we will lose the authority and support that L21 currently provides to management that is proportionate to risk within the rail industry. We would therefore prefer that L21 be retained.

If, however, HSE concludes that it should be withdrawn we would be happy to participate in the development of any replacement guidance.

Indeed, as our inspectors have a level of expertise in core health and safety matters, especially in relation to railway activities, and all ACOPs have an impact on the way that our inspectors carry out their inspection and investigation activities, we trust that you will involve us in the development of any new or revised documents. Such a joint approach would help to ensure that a consistent approach is maintained by our two organisations, an issue which is particularly important for duty holders regulated by both HSE and ORR. If you contact Colin Greenslade on 020 7282 2026 (colin.greenslade@orr.gsi.gov.uk), we can make arrangements for our involvement where it is appropriate.

As part of such a review we would find it helpful if revised ACOPs could also include railway related examples and guidance for the benefit of our duty holders. For example the Legionella guidance (L8) should perhaps make more reference to other potential sources of Legionella exposure in the workplace, such as train washes and train water systems, rather than focusing solely on wet cooling towers and water systems.

I hope that you find these comments helpful.

Yours sincerely,



Ian Prosser