

IODINE SAFETY NEWS

OH & S Due Diligence

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The purpose of a newsletter is to provide specialized information to all service companies whether in the petrochemical, transportation, service industry or logging industries regarding their responsibilities to protecting the health & safety of their employees.

DEMONSTRATING REASONABLE CARE

The concept of "Reasonable Care" might equally be defined as "OH & S Best Practices". By carrying out the following three elements of due diligence, an employer will be demonstrating a kind of "Best Practice" that will normally serve to show that the employer is demonstrating

1. **Foreseeability.** This means recognizing the potential for harm. In fact, a good hazard assessment process is a critical tool that helps an employer address this duty.
2. **Setting up systems.** Having recognized the potential for harm. What steps are taken to address it?

At a minimum, the employer should provide:

1. Systems of work
2. Adequate equipment (and maintain the equipment)
3. Personal Protective Equipment (PPE)
4. Training
5. Direction and instruction
6. Information
7. Monitoring and correction

It is important to stress that these seven items are a **complete package** – the employer must ensure that **all** seven components are met you can't just do the ones you like to do. These duties may be shared among many different persons, but somehow the organization as a whole must cover all the bases.

Of course these items may overlap:

- In order to maintain equipment adequately we need a **"system"** of inspection.
- In order to train effectively we may also have to provide instruction that is specific to the work being carried out at a particular time – e.g. **"site specific"** or **"task specific"**.

3. **Ensuring that systems work.** This is the simple matter of doing what you say you are going to do. A **"system of work"** is any procedure, arrangement of work, policy, standard, safety process, culture, or organizational arrangement to or is essential to safety.

The following list is not by any means exhaustive – it is intended merely to give examples of systems consistently used by organizations that are leaders in occupational health and safety.

The system that each employer adopts for its own use should depend on its industry, the type of operation, and the nature and degree of risks to which its workers are exposed.

Remember, having a system is in itself not due diligence. The system must be **working**.

Employers and workers can each gain a sense of the **"state of due diligence"** in their company by asking the kinds of questions that are included in

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Every organization must develop appropriate systems of work within their health and safety management system. Various system components are listed below with some overlap in terminologies used:

- Audits (health & safety)
- Behavioural safety
- Bench marking
- Buddy systems
- Change management process/es
- Codes of practice e.g. confined space entry
- Communications (including who's in charge, communications on the job, warning systems / signalling, etc.)
- Emergency response, first aid response and other contingency plans
- Field-level risk assessment (or similar programs)
- Hazard assessment, elimination and control (overall program and/or job specific)
- Health and safety committees (joint)
- Health and safety policies
- Health and safety program (management system / program administration)
- Incident investigations
- Inspections
- Job Safety Analysis
- Loss Management
- Off-the-job safety (promotion of safety away from work)
- Permitting system(s)
- Pre-job safety planning
- Preventive and other maintenance
- Procedures (e.g. lockout)
- Safe work plans
- Safe driving programs
- Standards (adherence to industrial standards, manufacturer's specification, building and fire codes, etc.)
- Task observations

DUE DILIGENCE CHECKLIST FOR EMPLOYERS

Although these questions are primarily meant for employers to consider, the checklist can also be used by supervisors, safety leaders, and joint committee and worker. By asking these question related to your own duties and overall knowledge as an employee about company operations, you can help to assess the level of due diligence within your organization.

1. Do you know and understand your health & safety responsibilities?) as an employer, supervisor, worker, supplier, contractor, prime contractor)?
2. Do you have definite procedures in place to identify and control hazards?
3. Have you integrated safety into all aspects of your work?
4. Do you set objectives for safety and health just as you do for quality, production, and sales (overall business performance)?
5. Have you committed appropriate resources to health & safety?
6. Have you explained health & safety responsibilities to all employees and made sure that they understand them?
7. Have employees been trained to work safety and use proper PPE?
8. Is there a hazard reporting procedure in place that encourages employees to report all unsafe conditions and unsafe practices to their supervisors?

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DUE DILIGENCE CHECKLIST FOR EMPLOYERS

9. Are managers, supervisors, and workers held accountable for health & safety just as they are held accountable for quality (or other aspects of business performance)?
10. Are safety factors considered when acquiring new equipment or changing a process (change management)?
11. Do you keep records of your OH & S program activities and improvements?
12. Do you keep records of the training each employee and supervisor receives? What about training for senior leaders and managers, e.g. due diligence training)?
13. Do your records show that you take disciplinary action when an employee violates safety procedure?
14. Do you review your OH & S program management system at least once a year and make improvements as needed?

EQUIPMENT & MAINTENANCE

Employers should provide equipment that is safe and ensure that it is kept in a good state of repair. Maintenance include preventative maintenance, inspections, regular servicing, and fixing items that are not in good working order.

Due diligence with respect to equipment consists of the following:

- Training operators and supervisors in the safe use of the equipment.
- Equipment must be properly installed.
- Ensuring that equipment that is not safe is not used.
- Using the correct equipment for the job.
- Having equipment available that enables the work to be carried out safely.

A system should be put into place to prevent equipment from being used if it is not safe to do so. Negligence in this case would be instructing someone to use equipment that was unsafe, or knowing that the equipment was in need of repair and failed to repair it.

EQUIPMENT INSPECTIONS

Due diligence with respect to inspections and maintenance consists of the following:

- Equipment must be inspected at suitable regular intervals.
- Once identified, equipment deficiencies, defects, and unsafe conditions must be promptly repaired or other remedied.
- The frequency of inspections should be based on experience, manufacturer's specifications, regulatory requirements, and your assessment of risk.
- Maintenance personnel should be competent to maintain equipment adequately.
- Maintenance work should be planned and conducted in a safe fashion (e.g. equipment that is being serviced should be locked out and safety devices should not be by-passed).
- Where appropriate, preventative maintenance and regular servicing of equipment is required.
- Maintenance systems should include pre-use equipment checks, identification of critical parts and items, and maintenance procedures.
- Workers should be empowered to refuse to use equipment that is not in good working order.

PERSONAL PROTECTIVE EQUIPMENT (PPE) & DEVICES

PPE and protective clothing must be appropriate to the hazard and in good repair. Workers must be trained in the proper safe use, care and maintenance of all PPE, including fit testing of respiratory equipment. (Also refer to Part 12 of the Code for general guidance on factors and duties relating to PPE)

Guards and other protective devices

These include guards, railings, warning devices, (e.g. alarms), interlocks, and some procedures, e.g. testing of hazardous atmospheres.

Elements of due diligence includes:

- Protective devices must be in place and must be functional
- Protective devices must be secure and appropriate for the risk
- Guards and other safety devices must be adequately maintained
- Hazardous atmosphere testing (prior to effecting confined space entry) must be carried out thoroughly
- Persons who carry out tests of hazardous atmospheres must be trained (and documented); equipment must be functioning properly and calibrated correctly prior to use

TRAINING

Remember that there is a close relationship between training, direction and instruction and monitoring to make sure that work is being done safely. Training should be thorough – handing out a safety booklet is not enough.

It is essential that your training programs be demonstrably effective.

Training may be formal (done in a classroom) or informal (on-the-job). Where on-the-job training is used it is important that it be based on defined procedures and must be documented.

Testing

Whenever you train, you should test to verify (documented results) that the trainee understands, remembers or can use what was learned in their training sessions. It is advisable, whenever possible, to make **objective** assessments of competency.

Consider these points:

- Knowledge can be assessed by written tests.
- Skills and knowledge of procedures can be assessed by observations or **“performance tests”**.
- **“Task Observations”** are useful (the worker is observed carrying out the task against a written description of the procedure. Any variations from the correct procedure can be noted and corrected when the observation is complete. This process is highly recommended.
- Initiate **re-training** when training deficiencies are noted e.g. when monitoring of work in the field shows that re-training is needed, or when regulatory changes occur and re-training may be required.

Testing (cont.)

Work performance should be monitored, to ensure that training is being utilized and instructions are followed. All tests should be documented. If a trainee does not achieve a passing grade, they should be made to repeat the training and testing, until they can demonstrate an acceptable result.

Ongoing Training

You should have some method of maintaining the currency of your training. Some organizations require operators to be “re-certified” at periodic intervals, e.g. every three years. Ongoing or revised training pertaining to PPE is important particularly where advances in equipment or technologies result in changed practices or better equipment. This also includes **“Compliance Training”**.

DIRECTION AND INSTRUCTION

This consists of telling workers what to do, when to do it, who to do it with, how to do it, what tools to use and what overall procedures / steps to follow.

This duty falls or could fall on anyone who makes work assignments (i.e. authorized work) – managers, supervisors, foremen, and team leaders. It might also fall on persons who issue permits, persons who do line-ups, or key **“contact persons”**.

The duties of persons who act in these types of roles will depend on their authority and control.

Due diligence in these situations will depend on the following:

- The work team must be capable of carrying out the work safely.
- Competent leadership must be provided.
- The correct procedures must be identified and followed – these might include pre-job safety plans, tail gate meetings, lock-outs, Job Task Analysis sheets, etc.
- The right equipment to do the work safely must be provided.
- Adequate communications must be established.

Above all the work team and its members must be competent to carry out the work safely.

Competency levels must be verifiable.

MONITORING AND CORRECTION

This is how you can make sure that the system you set up is actually working. Monitoring and correction consists of:

- Taking the time to check what’s happening.
- Intervening, correcting, and fine-tuning the system whenever you become of **“non-conformances”**.
- Remember, ***failing to monitor and correct is the single most common weakness*** in cases where accused parties are attempting to establish a due diligence defense

METHODS OF MONITORING

The most common and effective method of monitoring is observation of work by a supervisor.

Consider using some or all of these methods, all of which can be useful:

- Observations
- Incident and other reports (e.g. near miss) indicating unsafe work
- Audits
- Workplace inspections

OBSERVATIONS

There are two types of observations:

- Formal, *planned* observations with respect to specific tasks, and
- *General observation* of work going on by a supervisor or manager in the field

PLANNED OBSERVATIONS

This is a technique used in many loss management and control systems. A particular procedure, e.g. a critical task, is selected. Normally, there will be a written procedure. A work team then carries out the task under the eye of the person who is a trained or skilled *“Observer”*.

At the conclusion of the task, the Observer debriefs the work team, pointing out steps that might have been missed or carried out in an unsafe way.

This technique has several benefits:

- It serves as *“refresher training”* for the work team.
- It enables the Observer to identify and correct unsafe work.
- It reinforces safe work procedures, and
- It helps identify areas where the procedure has changed, but the changes have not been documented, or where the procedure may need to be changed.

GENERAL OBSERVATIONS

These should be continuous and ongoing. Every time the supervisor is in the shop or field, work should be observed. Then, if something is not safe, it should be addressed – immediately. This is really the acid test of whether your system is in fact working. If there is one area that is critical in showing due diligence this is it.

REPORTS

Any time that information comes back indicating an unsafe act or substandard condition, you have a duty to respond and, if appropriate, initiate some correction action.

These reports may be:

- *Formal* -- near miss and incident reports, or
- *Informal* -- verbal reports (in addition to verbal reporting, informal feedback may include rumours or other comments / information that may be mentioned at a work site amongst staff and / or supervisors / leaders).

Of course, the urgency of your response should be based on the degree of risk, and in the case of verbal reports, on the authenticity of the source. Many organizations classify (prioritize) incident reports as “A”, “B”, or “C”, based on their potential severity and likelihood of occurrence.

AUDITS

Audits are a very effective way of demonstrating due diligence. Audits typically assess the effectiveness of systems that have been set up to prevent workplace injuries. If we take, as an example, incident investigations – the types of questions an audit might address includes:

- Is the corporate standard being met? The standard should define the types of incidents that must be investigated, how promptly investigations should be carried out, etc.?
- Are all incidents / accident investigations protocols and processes being correctly followed?
- Are all recommendation followed through on?

To demonstrate due diligence, it is important to show that the deficiencies or non-conformances identified in audits are dealt with appropriately.

WORKPLACE INSPECTIONS

Most organizations carry out workplace inspections on a regular basis, perhaps monthly or quarterly. This in fact is one of the main functions of a joint workplace health and safety committee. These inspections serve to focus attention on keeping the workplace neat and tidy and in good order, in anticipation of the inspection. They also help to identify many unsafe or substandard conditions which can then be corrected.

It is important to remember that inspections focus on substandard conditions. They do not typically include work observations – which address unsafe behaviors, the main cause of incidents in the workplace.

KEY STEPS TO AVOID PROSECUTION

The Workplace Health & Safety (WHS) division of Alberta Human Resources & Employment (AHRE) offers the following suggestions to help employers avoid prosecution related to health and safety incidents or non-compliance with the Act, Regulation or Code.

TIPS TO AVOID PROSECUTION

Source: Adapted from pages 5 and 7 of a WHS Due Diligence bulletin (LI015), September 2002. Visit www.whs.gov.ab.ca for this and other workplace safety bulletins and publications.

- Implement a management system to identify, evaluate and control hazards
- The systems and procedures you choose need to be at least as good as those within your industry, and must be specific to your workplace.
- Workers and supervisors need to understand their roles and be trained in safework procedures
- **The work you do to ensure the health and safety of workers must be documented**
- **To make a credible defense you need proof that you did everything reasonably practicable**
- Do regular audits of your health and safety management system by a third party auditor

IN CONCLUSION

As part of meeting due diligence requirements you must establish and implement a process to **verify** the competency of your workers. The simplest and most economical is to develop and implement a program such as a formal Job Task Analysis (JTA) process.

The Job Task Analysis process involving physically observing your workers performing their jobs and grading them against established and measurable criteria in order to verify their job competency. This whole process is documented as required by OH & S legislation.

If you require additional information on this OH & S legislation or how to develop and implement a Job Task Analysis feel free to contact me at your convenience.

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