

■ Corporate manslaughter — should we worry?

What implications does the new Corporate Manslaughter and Corporate Homicide Act 2007 have for the chemical industry? Dr Julian Hought, Managing Director of HFL Risk Services Ltd, takes a look at the new legislation.

Introduction

With the exception of a number of organisations, such as the armed forces and the emergency services, almost every company in the UK could be liable to prosecution under the Corporate Manslaughter and Corporate Homicide Act 2007. The new legislation, which came into force on 6 April 2008, does not just apply to UK companies, but to all companies operating in Britain even if they were incorporated abroad. Oil rigs and other offshore installations regulated by UK law could also find themselves accountable, as could commercial shipping companies and others operating in the UK's territorial waters.

The new Act gives the courts power to prosecute companies rather than individuals in fatality cases where it is deemed that an organisation's conduct, in respect of health and safety matters, has fallen far below what could have been expected in terms of duty of care. The Act examines failures to manage health and safety within organisations at a senior level and a particularly dim view will be taken of those companies that cut costs by taking unjustifiable risks with people's safety. It is far more wide-reaching than an examination of the superficial causes of a fatal accident and seeks to investigate the systems of work and equipment used by employees plus the condition of work sites and other occupied premises. In addition, the products and services supplied to customers will be under scrutiny.

Whether or not a company is found guilty of corporate manslaughter will be for a jury to decide. They will have the relevant legislation and codes of practice at their disposal, but must be satisfied that a gross breach has occurred.

Implications for the chemical industry

So, should the chemical industry be worried about this new Act? Interestingly, there is no new requirement to comply with current legislation; however, the very fact that this industry is already so highly regulated means that those companies who are acting and behaving responsibly should have no reason to fear it.

In terms of the actual number of workplace fatalities in the UK, there is a positive downward trend. Statistically, the UK has lower figures than any of the UK Member States up to 2005 (when the latest data was available), and between 2006–2007 there were just 185 fatal injuries in this country. In fact, the rate of injury per 100,000 workers has fallen by 76% since the Health and Safety at Work, etc Act was passed in 1974.

The chemical industry has an excellent and improving record. Its management has a reputation for managing with integrity and respecting the materials it handles, where hazards are known. This approach of corporate responsibility is taken despite commercial pressures brought on by external factors. As a minimum, the industry needs to ensure it complies fully with accepted good practice produced by industry associations and the regulator, where reasonably practicable. For those companies where the Control of Major Accident Hazards Regulations 1999 (SI 1999 No. 743) (COMAH) apply, the company will need to demonstrate that all risks are as low as reasonably practicable. New guidelines on process safety management and the development of key performance indicators following the Baker Report of the Texas City incident should enable senior management to manage and control their risks accordingly.

On the rare occasions when fatal accidents occur in this sector, it is usually because of an omission or error by management or employees. There are a number of reasons why this could have occurred. For example:

- cutting back resources to a critical level without managing the risk



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- not carrying out an adequate risk assessment on a process before start-up
- cutting back hard on investment such that integrity is breached
- unreasonably and deliberately disregarding the appropriate legislation.

However, under the Act the courts will have to decide whether one or all of these are a contributory factor to the death (ie a gross breach of duty of care) and that the senior decision makers in the company managed systems of work and equipment which fell far below acceptable standards. In this case, this could be headquarterd managers, or centralised functions, not failures by single employees or junior managers. Acts or omissions by more junior management who were found to be acting alone would not render the company corporately responsible, although the prosecutors, in their investigations would be searching for the links between corporate behaviour and individual actions.

The fines for an organisation convicted of corporate manslaughter are unlimited, but they are expected to be proportionate to the size of the company, the degree of risk and the danger involved. At the top end of the scale organisations could be looking at similar amounts to severe fines for health and safety breaches in the past. Examples include the following.

- The £15 million fine for Transco's fatal 1999 explosion at Larkhall.
- Balfour Beatty was fined £7.5 million and Network Rail £3.5 million for the Hatfield derailment in 2006.

While adherence to the current regulations for the chemical industry means that prosecutions under the Act should be a rarity, the new Act should be seen as an opportunity for chemical companies to manage and check their position. Senior management should increase their efforts to ensure that a risk management assessment is made of their activities. This

assessment should embrace all aspects of business interruption, of which corporate manslaughter could be a significant one.

Everyone is well aware of the necessity to keep toxic substances contained within the designated areas and how to transport, handle and store chemicals in a safe manner. However, the disastrous effects of human error should never be underestimated. The whole issue of human failure, whether resulting from violations or mistakes, has been receiving more attention than ever before within the hazardous process industries. It is now recognised that human failure has played a part in over 80% of all major accidents to date (eg Bhopal, Piper Alpha and Texas City to name but a few) and that mistakes are made irrespective of how much training and experience employees possess or how motivated employees are to do the right thing. Management also accepts that it cannot lay the blame with frontline operators, especially in light of the new legislation, and companies should instead be looking at system defects caused by poor design, incorrect installation, faulty maintenance and bad management decisions.

Conclusion

Well-structured policy deployment processes, supported by effective management systems, can help companies to minimise human failure at every level. But this does require an understanding of the hazards and attendant risks, and recognition that the most effective risk assessments involve representatives from all sectors of the workforce. Furthermore, identification of the impact of human errors, across all activities from design to decommissioning, is a fundamental key to the production of a good safety report for those sites regulated under COMAH. Recognising and reducing the risks and consequently putting appropriate measures in place, will help to avoid fatalities in future. ■