

January 27/20

To:

Mr. Rod Philip
OEAC Chairman

Dear Rod,

The TSSA Advisory Council received the proposed Path 2 Guidelines recently (*after acknowledging that the council was not supporting this pathway and encouraged TSSA to concentrate their efforts on the other OE Expert Panel recommendations*) and are now expected to review it and provide feedback by January 31st, 2020. The Institute of Power Engineers have been an active participant of the Operating Engineers Advisory Council for the TSSA since its inception. Operating Engineers (Power Engineers) have been the front-line professional workers since the beginning of commercial steam production. Since 1940, the IPE is the only Canadian entity that represents the Power Engineer profession, including the Compressor and Refrigeration Operators. The feedback provided herein is not personal, but, a concerned view point of the Power Engineer profession.

The Path 2 Risk and Safety Management Plan (RSMP) evolved out of the Operating Engineers Regulatory Review conducted by Deloitte LLP as the first step in modernizing the current Operating Engineer Regulation 2019/01. From the “Regulatory Review” there were 25 recommendations made and the members of the OE Expert Panel held consensus with 23 of them. The follow 2 recommendations did not receive full consensus of the Panel.

- **Topic D: Improving regulatory compliance 13.** To improve regulatory compliance, TSSA should have additional enforcement mechanisms to manage different situations. (No consensus)
- **Topic F: Modernizing the operating engineer certification system 22.** To obtain an entry-level 4th class operating engineer certification, candidates should be required to take an in-class or online course. (No consensus)

Only **Topic A: item #1. “The regulation should adopt a risk-based approach”** has seen any activity by the TSSA, Ministry of Government and Consumer Services (MGCS) policy writers and management. This has been evidenced by the partial development of a Path 1 strategy early last year (of which 61% of the participants surveyed supported by requiring further developments) and now the full-fledged guide to submitting a Path 2 RSMP that we (Advisory Council) are now asked to provide feedback on, that only 25% of the surveyed participants supported. The sector participation clearly showed a lack of support for Path 2. The optics is apparent that the Reg. review progress has been co-opted by others (**The International Institute of Ammonia Refrigeration (IIAR), Global Cold Chain Alliance, Compressed Natural Gas Lobbyist and the low –water volume Boiler Manufactures**) whose motives are not to advocate for the OE profession that **safeguards** the operation of the plants in Ontario. If the same amount of energy was put towards the other 23 recommendations, the value of the Operating Engineers/Operator to their respective employers would see an increase.

The IPE is not, nor has been, opposed to innovative approaches to risk management. Innovation is what drive human society forwards. However, academic innovations that are not validated due to practical limitations (i.e. no applicable data and using guesstimate modifiers) can do more harm than good. Change for the sake of change is fraught with risk.

Our concerns with the proposed Path 2 Guidelines are as follows;

- The guidelines seem to be little more than a regurgitation of CSA Z767. There is little in the guideline that would help guide prospective candidate plants, with the only concrete guidance being: ***“As a plant may not have access to plant or corporate engineering staff who have competence in the use of generally accepted process risk assessment methods, the plant may choose to employ outside competence”***, for instance a professional engineering firm with skill in risk assessment or other qualified consultancy. The expectation for candidate plant owners (could be 99% of the plants) to review and understand the guideline and all 31 references footnotes is very burdensome and impractical.
- **Appendix B** is at best, a compilation of references of questionable relevance, and at worst, a source of misinformation and false validity by recommending non-existing acceptable source for failure data (we understand that there is no such thing as a NBIA database). This impacts the entire credibility of the document and its overall approach. This approach simply has no relevant data. Making safety decisions on poor data increases risk, not decrease risk.
- The oversight of the RSMP approval process. Who are “approved competent” Risk Managers? What will be the minimum education and experience requirements? To whom do they answer to? The IIAR has made it very clear, as authors in a written article that they have been actively involved lobbying the US EPA in order to remove/reconsider a rule to amend the Risk Management Program Regulation, requiring facilities to be regulated, launched by the Obama Administration.
- Inspection of plants that choose to work under a Path 2 RSMP. Who does the inspections? How often? What will be the repercussions for failure to comply with the approved RSMP?
- Who onsite will be knowledgeable/responsible for the above information? Just having information is only a small part of being in control of the risk. Knowing how to interpret the risk and/or predict potential risk is not a job function of a manager, supervisor or line worker in normal workplace environments. This will require specialized training of the aforementioned workers and regular updating of this training in order to ensure all who have been entrusted by the owner(s) to manage the risk remain competent to do so. What are the standards for the risk management training? Who will be deemed competent to provide this training? Currently SOPEEC, a sub committee of ACI, is the recognized body that regulates the educational requirements (syllabus) of all Operating Engineers/Operators across Canada. IPECC is the council that develops the curriculum for these standards.
- If the policy writers are looking to remove the need of Operating Engineers/Operators from the workplace through the implementation of an RSMP, then why are they still included in the expectations of the TSSA? Will the OEs be reassigned to a new but non-mandatory role? This would not be likely as the goal is to reduce burden.

- SOPEEC and ACI have recently released an established prescriptive “standardized plant rating” for all plants across Canada, which we believe fits and aligns within the spirit of the Labour Mobility Act. The province of PEI has already adopted and enacted the “standardized plant rating” within its regulation. Is Ontario willing to compromise its safety record in order to replicate the Process Safety Management of the States, and will Ontario be contravening the fundamental nature of the Mobility Act when other provinces chime in and adopt the ACI endorsed standardized plant rating system?
- As this movement to an RSMP environment is new, there will be a very small select group of engineering firms with the expertise or competence. The TSSA should have a well-defined expectation of competence for risk assessment to provide the basis by which in-house and corporate engineering staff can be measured. This should not be left for industry to set the “standard” by which risk assessment competence is set. One of the highest participant rated surveys, fashioned by the Ontario government disclosed and revealed clearly a lack of support for Path 2; a RSMP based on the Chemical Industry Association of Canada’s Process Safety Management Standard (CSA Z767-17) that mimics the Process Safety Management in the United States, in which the Obama administration was attempting to tighten up for safety reasons.
- What will be the auditing frequency for RSMPs used for Path 2? Annually? Bi-annually? Similar to current OE inspection protocol? Here again, the **IAR** has made it well know that it supports the so-called “*Reconsideration Rule*” that would rescind the provisions related to third party audits, root cause analysis, information sharing and safer technology analysis. Calling them problematic provisions.
- Is a gap analysis a subjective process that may be influenced by management? At first glance, the gap analysis appears very simplistic in the manner information is gathered to ascertain a company’s potential ability to use the Path 2 RSMP approach in order to reduce their perceived burden. The simplistic mode of questioning may be focused on making every plant look at this as the option above all other regulatory options.
- Throughout the document there are other professions brought forward as the best point of service to support a company in fulfilling the requirements to comply with Path 2 RSMP. Risk Managers and Professional Engineers are **NOT** Operating Engineers/Operators who have the credentials of frontline practical experience and knowledge to effectively asses the risk in an active plant that ultimately back up their professional back ground.
- By involving many other layers of professions in the academic risk mitigation will in itself add risk due to the blurring of line of responsibility for risk mitigation. Most of these professionals will never set foot in the plant that they have provided their expertise, but their contribution to the RSMP will have dis-proportional consequences to the outcome. If a process upset occurs while under a Path 2 RSMP, where does the blame go? The company who followed their approved RSMP or the professionals who provided their expertise that made it possible for the approval of the RSMP? If the purpose of Path 2 RSMP is to reduce the burden (remove an owner paid profession) on industry by providing a theoretical means to reduce risk through a paper process, who will the blame be placed on? What will be the consequences of a failure

that impacts property and/or human life in the Path 2 RSMP? There is no direction provided thus far.

- There is still a push for the use of UK based risk models as being practical for Canadian facilities that use primarily North American manufactured equipment, engineering standards and practices and management philosophies.

There seems to be a divergent interpretation of the use of time, talent and finances being applied to addressing the 23 recommendations that the Operating Engineers Expert Panel agreed were to be worked on. The Operating Engineers Regulatory Review was completed June 19, 2017. To date, **Topic A 1. "The regulation should adopt a risk-based approach"** is the only recommendation that has received time and attention. The new "**Alternate Rules**" has placed the OE regulation aside allowing for the possible inclusion of this proposed amendment to the current Regulation.

In March 2018, we received the vision for Path 1 and Path 2 as the replacement to the OE Regulation. Path 1 only expressed the mechanism by which risk would be assessed but not how it would be applied and Path 2 was only talked about as a concept. Feedback was sought both from the OE Expert Panel and eventually the public at large. If the responses were to be followed as the direction for the TSSA and MGCS regarding where to focus their time talent and Treasure, it would not have been on Path 2 RSMP.

The work done to produce an allegedly complete document and process; with a view of complete abandonment of all other recommendations defies logical understanding. If the preponderance of the inclusion of other professions is needed in the Path 2 RSMP process, then this is an indication that other professions are using the review process to embrace the requirements to include themselves replacing operating engineers/operators as a functional part of the Regulation, and thus lose the practical experience and expertise that OEs uniquely bring to the table. Any work done on the other 23 recommendations would have the effect of advancing the importance of safety and the role of the Operating Engineer/Operator. Clearly there seem to be other actors with much different agendas than those of the OE Advisory Council and maybe the TSSA at work.

Ralf Klopff

IPE Association Representative - OEAC

cc. TSSA, MGCS, Premier Ford