Legionella – HSE’s Role

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“Ensure that risks to people’s health & safety from work activities are properly controlled”

Management of the risk

CONTROL not ERADICATION
Minimise proliferation
Contain aerosols

Legionnaires’ disease: the control of legionella bacteria in water systems

Health and safety and the law

• Health & Safety at Work etc Act 1974
  • S 2, 3, 7 & 37
• Control of Substances Hazardous to Health Regulations 2002 (as amended)
  • Regs 6, 7, 8, 9 & 12
• Management of Health & Safety at Work Regulations 1999, Regs. 3 & 7

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Health and safety and the law

COSH Reg 6 (1)
An employer shall not carry out any work which is liable to expose any employees to any substance hazardous to health unless he has –

a) Made a suitable and sufficient assessment; AND  
b) Implemented the control measures identified.

London Science Museum Case

Pivotal in support of approach taken in ACoP & L8

Science Museum Prosecution 1990

Charge under S3(1) HSWA: alleged that for their air conditioning system they had failed to:
• clean and disinfect  
• operate a water treatment system  
• monitor  
thereby exposing the general public to risks to their health from exposure to legionella

Science Museum Case

• Defence submitted that no actual risk to public health had been proved  
• Trial judge directed that:
  • Did not need to prove that MoP had inhaled legionella bacteria  
  • Did not need to prove that the legionella bacterium was present  
  • Sufficient to prove that there had been a RISK of it being there

Science Museum Case

• The thrust of any HSE enforcement action is likely to be on proving:
  • Water temperature in the appropriate range  
  • Supply of nutrients available  
  • Presence of aerosol  
  • Potential exposure  
  • NOT the presence of legionella bacteria

Proactive Work

• Publications e.g. L8, COSHH (ACOP & Guidance) nursing home guidance, Audit Checklist (C200)  
• Seminars  
• Inspections
Investigation – Why?

• Control
• Prevent
• Legal obligations
• Others
  ▪ Research
  ▪ Public concerns
  ▪ Political concerns

Investigation - Powers

Health & Safety at Work etc Act 1974
• Right to enter premises
• Take measurements & photographs
• Take possession of articles & substances
• Require the production of, inspect and take copies of relevant documentation
Section 20 (2) m - any other power necessary for carrying out our investigation.

Investigation - Enforcement

• Prohibition Notice
• Improvement Notice
• Prosecution

Common Failings

• Lack of a competent Responsible person (& deputy)
• Poor quality assessments
• Lack of/poor training for staff
• Confusion about microbiological sampling for legionella (hot & cold water systems)

Take home message

• Control not eradication
• Compliance with ACoP & Guidance
• Don’t necessarily need identifiable presence of legionella
• Further information
  www.hse.gov.uk