

2nd Annual Cambridge Conference on Regulation, Inspection & Improvement

“The end of zero risk regulation: risk toleration in regulatory practice”

RISK, REGULATION AND REVENGE – CHANGING THE FOCUS OF RISK GOVERNANCE IN BULK ENERGY PRODUCTION

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The perpetration of the concept that the usual condition of life is to be risk free has led to some severe challenges for government and the regulatory process. An adjunct of the expectation of a safe society is the blame culture. The result of the risk expectations of modern society and its inevitable disappointment is to place the authorities responsible for the regulation of bulk electrical power production in a position in which it meets the expectations of few stakeholders.

Although they do not share all of the imperatives of the legislative arm of government, the regulatory organisations responsible for implementing safety in the civil energy sector face a requirement to address a triad of factors:

1. The risk tolerance of the community that is served.
2. The resources available to the regulatory agency.
3. The methodology used to measure and enforce tolerable risk levels.

These factors tend to be dynamic and related. Thus, tolerance levels are reflected in the regulatory methodology and the resources necessary to bring about implementation. If tolerance levels are unrealistically demanding, no amount of funding may meet the required standard. In addition, regulation can be highly specialised, and recruiting an appropriate number of regulatory staff may prove impractical.

Previous attempts to address this issue, in particular where dread risk has been an aspect of the regulatory problem, has focussed on altering risk tolerance in the population, or at least attempting to align public perception of risk with that of government personnel, technical specialists and industry. This has been the “knowledge gap” approach to finding a solution to the triad problem. It has been largely unsuccessful because the shortfall, particularly in respect to dread risk, has not been one of knowledge but one of trust. Trust deficit may be expanded as a concept to include the relations between industry and the government, as venture capital for new-build energy plant is unlikely to be forthcoming if the regulatory measures cannot be predicted with any certainty during the investment period.

Trust may be viewed as an expectation of just or fair treatment by others. To retain legitimacy, any government, and its servants, must act with justice. In the case of the regulation of bulk energy production, whether the knowledge gap model is either largely misperceived or irrelevant, there can be no sound basis for risk governance without exemplary justice – particularly when dread risks are involved.

Justice has two related elements – distributive and retributive. This presentation explores novel approaches to the achievement of both aspects in order to better ensure

the just distribution of risk and the redress of impacts in bulk power regulation, thereby obviating the need to reflect risk tolerance levels in unreasonably demanding regulatory standards and practices.