



Board of Directors' Health and Safety Initiative

From Awareness to Action Building a Better System for the Future

A Resource Guide

We want to hear from you

WORK SAFE BC

WORKING TO MAKE A DIFFERENCE
worksafebc.com

Contents

1. INTRODUCTION AND OVERVIEW....	1	APPENDICES	39
1.1 Introduction	3	Appendix 1. The WCB’s History and Prevention Focus.....	41
1.2 The Nature of Workplaces in B.C.	5	Appendix 2. The WCB’s Guiding Principles and Premises.....	44
1.3 Worker Health and Safety in B.C.	7	Appendix 3. The Nature of Regulations: Cited Benefits and Challenges	46
1.4 Ensuring Workplace Health and Safety in B.C.	9	Appendix 4. The Nature of Regulations: Other Contemporary Regulatory Approaches	48
2. PART 1 OF THE WCB’S PREVENTION FOCUS.....	13	Appendix 5. Compliance: Other Contemporary Practices	52
2.1 The Nature of Regulations	15	Appendix 6. Compliance Tools: Other Contemporary Approaches	55
2.2 Regulation Review and Development Process.....	18	Appendix 7. Roles: Other Contemporary Approaches	59
2.3 Compliance with Standards.....	20		
2.4 Direction and Enforcement.....	22		
3. PART 2 OF THE WCB’S PREVENTION FOCUS.....	27		
3.1 Collaborative Relationships	29		
3.2 Financial and Other Incentives.....	31		
4. EMERGING TRENDS AND CONCLUSION	33		
4.1 Monitoring and Responding to Emerging Trends	35		
4.2 Conclusion	37		



1

Introduction and Overview

**Workplace Health and Safety
in British Columbia**

1. Introduction and Overview

Workplace Health and Safety In British Columbia

1.1 Introduction

Between 2000 and 2004, 785 workers in British Columbia lost their lives due to work-related injury, illness, or disease. Another 5,579 were seriously injured and, while fortunate to have survived, will never experience life the same way again. This work-related harm, and the significant human and financial costs that it imposes, is not an inevitable or acceptable part of doing business – it is preventable.

In recent years, the Workers' Compensation Board of B.C. and its stakeholders – including workers, employers, and their respective associations – have combined their efforts to prevent work-related injury, disease, and death in B.C. These efforts appear to be working: the injury rate in the province's workplaces has decreased substantially over the last 10 years.

Despite this success, some key occupational health and safety areas, such as the rate of serious injuries, deaths, and occupational diseases, continue to require improvement. In addition, the factors that affect health and safety in the workplace are changing rapidly, and B.C.'s workplace health and safety system must be able to anticipate and respond to them effectively. The WCB's Board of Directors and many of its prevention partners believe that more can be done to further reduce, and perhaps one day eliminate, work-related injury, disease, and death in B.C.

As part of its statutory obligation to plan for the future, the Board of Directors has launched a health and safety initiative to examine the current and possible future state of B.C.'s workplace health and safety system. The primary goal is to enable the WCB and its stakeholders to continue to:

- Reduce work-related injury, disease, and death; and
- Proactively address emerging trends, risks, and opportunities

In the coming months, the Board of Directors will engage staff and stakeholders in a discussion about several fundamental issues, including:

- How the WCB should regulate, educate, consult, and enforce in the workplace health and safety context
- What stakeholders view as the appropriate role of the WCB and its workplace partners in any future system
- How to address and respond to emerging trends that could compromise workplace health and safety
- How to increase awareness that work-related injury, disease, and death are preventable and not an acceptable or inevitable cost of doing business
- Whether the WCB can improve workplace health and safety by developing collaborative relationships and financial and other incentive programs, and if so, how such relationships and/or programs should be established and funded

The purpose of this Resource Guide is to facilitate an open and informed discussion about these topics. Recognizing that you may be more interested in some issues than others, this guide is segmented to allow you to focus on select topics. The guide provides contextual information about the nature of workplaces and the state of worker health and safety in B.C. It then sets the framework of B.C.'s current workplace health and safety system. Most of this information is based on the two parts of the WCB's prevention focus:

1. Maintaining standards to protect worker health and safety by establishing workplace health and safety requirements, and fostering compliance with those requirements
2. Promoting voluntary efforts to improve workplace health and safety by developing and maintaining collaborative relationships (including those with health and safety associations), and developing and implementing financial and other incentive programs

The last section of this guide includes an overview of the WCB's efforts to monitor and respond to emerging trends, risks, and opportunities. These efforts advance both parts of the WCB's prevention focus.

If you would like more information, the appendices provide an overview of the WCB's history, supervisory jurisdiction, mandate, and guiding principles, as well as contemporary approaches to regulation and compliance.

When reading this guide, you should note that the information is not exhaustive; it is simply meant to stimulate thoughtful consideration and discussion by illustrating a range of workplace health and safety practices. You will also notice

that it includes more information about the WCB's activities than those of its prevention partners. This focus is not meant to detract from the current or potential roles that other stakeholders could play in promoting workplace health and safety in B.C.; rather, the Board of Directors invites a discussion about what additional or alternative roles these partners could play in the future.

Terminology

Several key subjects, such as compliance and enforcement, will likely be raised in subsequent discussions about B.C.'s workplace health and safety system. In order to facilitate this dialogue, this guide defines the following key terms for those who might be less familiar with the system:

- **Compliance:** The state of acting in accordance with laws and regulations
- **Enforcement:** The process of compelling actions that are in accordance with laws and regulations
- **Performance-based regulations:** General or specific performance objectives designed to prompt broad outcomes without specifying how they are to be achieved
- **Roles:** The level of involvement and nature of responsibilities that the WCB, employers, workers, their associations, and other stakeholders assume in preventing work-related injury, disease, and death
- **Prescriptive regulations:** Specific and objective rules designed to prompt specific actions by defining what workplace parties must do, such as specifying particular behaviours,

technologies, processes, or procedures, usually without express reference to the desired result

The WCB Board of Directors thanks you in advance for considering these important issues. Your expertise and commitment is essential as we work together to improve worker health and safety and build a better system for the future.

1.2 The Nature of Workplaces in B.C.

Before engaging in a meaningful discussion about B.C.'s workplace health and safety system, it is important to be familiar with the nature of workplaces and the state of worker health and safety in B.C. The next two sections provide information about these topics.

The current state

B.C.'s employed workforce consists of more than 2 million workers, most of whom (73%) work for small or medium-sized organizations.¹ In 2003, 34% of the province's paid workers were unionized or covered by a collective agreement or a union contract. These workers are employed in a vast array of different industries spanning over half a million B.C. workplaces.

The WCB regulates approximately 86% of the province's employed labour force, or nearly 2 million workers. It regulates:

- Full- and part-time workers

- Seasonal employees
- Apprentices
- Some learners
- Some volunteers

The WCB's occupational health and safety jurisdiction does not, however, extend to workers in industries covered by:

- Federal jurisdiction, such as highway transportation, telephone and telegraph systems, fishing, canals, shipping and shipping services, radio and television broadcasting and cable systems, airports, banks, and grain elevators
- Certain provincial statutes, such as miners

The occupational health and safety of these workers is governed by other federal and provincial agencies.

For administrative purposes, the WCB divides the numerous industries in which workers are employed into seven sectors (primary resources, manufacturing, construction, transportation and warehousing, trade, public sector, and service sector) and 24 subsectors.² In 2004, the greatest number of workers (56%) from these seven sectors were employed in the service sector, which provides services relating to health care, social assistance, education, business, accommodation and leisure, and utilities. The fewest number of workers were employed in the public sector (2%), primary resources (3%), and transportation and warehousing (4%).³

¹ This figure includes self-employed individuals. Small and medium-sized employers are defined as those that employ fewer than 100 workers.

² In addition, some workers work for self-insured (or "deposit class") employers (e.g., the Government of B.C.).

³ The public sector figure includes workers employed by local governments; those employed by provincial and federal governments are in the self-insured employer group.

The WCB also has supervisory jurisdiction over approximately 179,000 employers throughout B.C., most of whom (approximately 92%) are small firms with fewer than 20 workers. In 2004, the subsectors with the highest percentage of very small employers were agriculture; transportation and related services; accommodation, food, and leisure services; other services; and professional, scientific, and technical services. Conversely, the subsectors with the highest percentage of large employers were public administration, food and beverage products, and warehousing.

Emerging trends

In the last decade, B.C. has experienced significant immigration from Asia, Europe, and South America. As a result, a small but significant proportion of B.C.'s population, and presumably its workers, cannot read, write, or understand English.

In 2001, 25% of British Columbians reported a language other than English as their first language. Chief among their first languages were Mandarin, Cantonese, Punjabi, and German. Other common first languages included French, Tagalog, Spanish, Italian, and Korean.⁴ Immigration to B.C. is likely to continue in the coming years, which will pose challenges for the implementation and delivery of effective prevention programs and services.

B.C.'s population and workforce are expected to increase substantially and grow proportionately

older over the next two decades.⁵ Among other things, these trends could result in:

- Increases in the number of work-related injuries, diseases, and deaths as the number of workers increase
- Increases in the duration of work-related claims as older workers often take longer to recover from work-related injuries than younger workers
- Shortages of trained and experienced workers, especially in resource and construction sectors, as older workers retire

Historic trends also suggest a possible future decline in the proportion of the workforce that:

- Is employed under traditional employer-employee, full-time contracts of service, as new work arrangements, such as contract, casual, and part-time arrangements, multi-layered operating structures of prime contractors, subcontractors, and independent operators continue to grow
- Works on site, as arrangements to work from home increase
- Is unionized, as the service sector continues to grow more rapidly than the primary resources, manufacturing, and construction sectors

The proportion of workers employed in different industry subsectors will also likely shift in the future. The WCB's statistics over the last 10 years indicate an upward trend in the number

⁴ B.C. Statistics, 2001 Census Profile: British Columbia (Ottawa: Statistics Canada, Fall 2003), p. 3.

⁵ B.C. Statistics, British Columbia Population Projections (Victoria: Ministry of Management Services, July 2004), p. i.

of workers employed in the service sector and a downward trend in the number of workers employed in the forestry and wood and paper products subsectors. In addition, provincial endeavours such as hosting the 2010 Olympic Winter Games and permitting increased levels of oil and gas activity (especially offshore drilling) suggest a likely increase in the number of workers employed in subsectors such as general construction, road construction and maintenance, accommodation and food service, retail, transportation, professional services, and oil and gas.

1.3 Worker Health and Safety in B.C.

The WCB does not provide compensation for all types of work-related injury, disease, and death. Accordingly, this overview is restricted to those that are compensable.⁶

Performance measure

To track the relative health and safety of B.C.'s workplaces, the WCB measures the annual incidence of compensable work-related injuries, diseases, and deaths among the province's workers. In this regard, the annual injury rate represents the number of short-term disability claims accepted by the WCB per 100 full-time employees. The injury rate in B.C. has decreased 42% since 1994, and in 2003 it reached an all-time low of 3.1 short-term injuries per 100 full-time employees. This rate continued in 2004.



Despite this positive indicator, some key workplace health and safety issues continue to require attention. For example:

- The rates of compensable work-related serious injuries (such as amputations, spinal severs, multiple fractures, head injuries, and third-degree burns) and deaths have not decreased at the same pace as the injury rate in general.
- The rate of death from occupational diseases (such as asbestos exposure) has been increasing.
- Some industry sectors (such as forestry, construction, health care, and trucking), types of businesses (such as small business in some sectors), types of workers (such as males aged 25–44), and specific firms experience higher-than-average injury rates.

⁶ To be compensable, an injury, disease, or death must have arisen out of and during the course of a worker's employment. Further, under the *Workers Compensation Act*, certain conditions (such as chronic stress) are specifically excluded from compensation.

The current state

In 2004, 134 workers in B.C. died of work-related injuries, illnesses, or diseases. This means that each week, on average, at least two workers did not return home from work. Sixty-two percent of these deaths were due to injuries and the remaining 38% were due to disease. The single largest source of injuries was work-related motor vehicle accidents. The single largest cause of disease was work-related asbestos exposure.

Also in 2004, 121,306 workers in the province suffered non-fatal work-related injuries or diseases, about half of which were serious enough to require them to miss work. Excluding those cases that included only health care costs (and did not include any time lost from work), most of these claims (94%) involved work-related injuries rather than occupational diseases. The most prevalent types of work-related injuries were strains, cuts, contusions, and fractures.

A worker's relative risk of suffering an occupational injury or disease depends on a number of factors, including his or her age, experience, and type of work. An office clerk, for example, is much less likely to suffer from a serious injury than a young worker in the construction industry. Further, many employers operate for long periods without any of their workers suffering from a work-related injury, disease, or fatality. In 2004, for example, more than 90% of the employers registered with the WCB (162,000) had no short-term disability claims.

The industry subsectors with the greatest rates of work-related injury in 2004 were warehousing and food and beverage products manufacturing. More than 6% of workers were employed in these subsectors.

2004 at a glance	
Number of claims and their effect	
Compensable work-related fatalities	134
Compensable work-related injuries and diseases	121,306
Total days lost from work	2,762,021
Claim costs	\$1,215,865,000
Demographics for work-related injuries	
Male injured workers	71%
Female injured workers	29%
Average age of injured worker	39 years
Younger injured workers (under 25 years)	16%
Older injured workers (over 54 years)	10%
Top five causes of work-related claims	
Strains (other than back strains)	31%
Back strains	24%
Cuts	11%
Contusions	11%
Occupational diseases	6%

Emerging trends

WCB statistics point to future shifts in work-related health and safety risks. While traditionally the number of work-related injury claims has far exceeded that of occupational diseases, the number of occupational disease claims has grown relative to occupational injury claims over the last 10 years. More importantly, occupational diseases are forming an increasing proportion of long-term disability claims and percentage of deaths. This phenomenon may be caused, in part, by:

- The emergence of new diseases and infectious agents, such as HIV, avian flu, severe acute respiratory syndrome (SARS), and the Norwalk virus, which pose potential risks to health care and other workers
- Advances in medical and scientific evidence, which establish a link between certain diseases and certain industrial exposures and processes, such as asbestosis where there has been exposure to airborne asbestos dust
- The potentially long latency periods of certain occupational diseases, such as Raynaud's phenomenon, cancer, allergic reactions, cedar dust asthma, and coal workers' pneumoconiosis⁷

The growing proportion of occupational diseases is a particular concern in light of WCB statistics that indicate these occupational diseases are among the fastest growing types of occupational diseases over the last five years.

1.4 Ensuring Workplace Health and Safety in B.C.

The WCB Board of Directors is confident that, by working together, the WCB and its prevention partners can and will continue to reduce work-related injury, disease, and death in B.C. To that end, this section provides an overview of the WCB's mandate. This focus is not meant to detract from the current or potential roles that other stakeholders could play; rather, it is intended to facilitate a discussion about two fundamental issues:

1. How the WCB should regulate, educate, consult, and enforce in the workplace health and safety context
2. What stakeholders view as the appropriate role of the WCB and its workplace partners in any future system

An overview

Work-related injuries, diseases, and deaths are not an inevitable or acceptable part of doing business – they are preventable. Fostering worker health and safety in more than 500,000 workplaces in B.C. is, however, a big job.

This responsibility is shared by many stakeholders, including the WCB, employers, workers, supervisors, owners, officers, and others. Employers, for example, are required to safeguard the health and safety of their workers by making them aware of all known or reasonably

⁷ Raynaud's phenomenon can be caused by exposure to cold temperatures, repeated trauma, or vibrations. These exposures trigger the constriction of blood vessels and result in the interruption of blood flow to the fingers, toes, ears, and nose. Coal workers' pneumoconiosis is a respiratory disease caused by inhaling coal dust for prolonged periods.

foreseeable workplace health or safety hazards, and by providing their workers with certain protective equipment, devices, and clothing.

Workers must also take responsibility for their own workplace health and safety by using protective equipment, devices, and clothing in certain circumstances, and by ensuring that alcohol, drugs, or other causes do not impair their actions.

In workplaces with more than 20 workers, joint worker-employer health and safety committees also bear some responsibility for occupational health and safety. Among other things, these committees must:

- Identify situations that may be unhealthy or unsafe for workers
- Deal with complaints relating to worker health and safety
- Make recommendations for the improvement of the occupational health and safety and occupational environment of workers

Other stakeholders, such as labour unions, employer associations, and joint worker-employer industry associations also have an interest in, and are committed to, improving workplace health and safety.

The role of the WCB

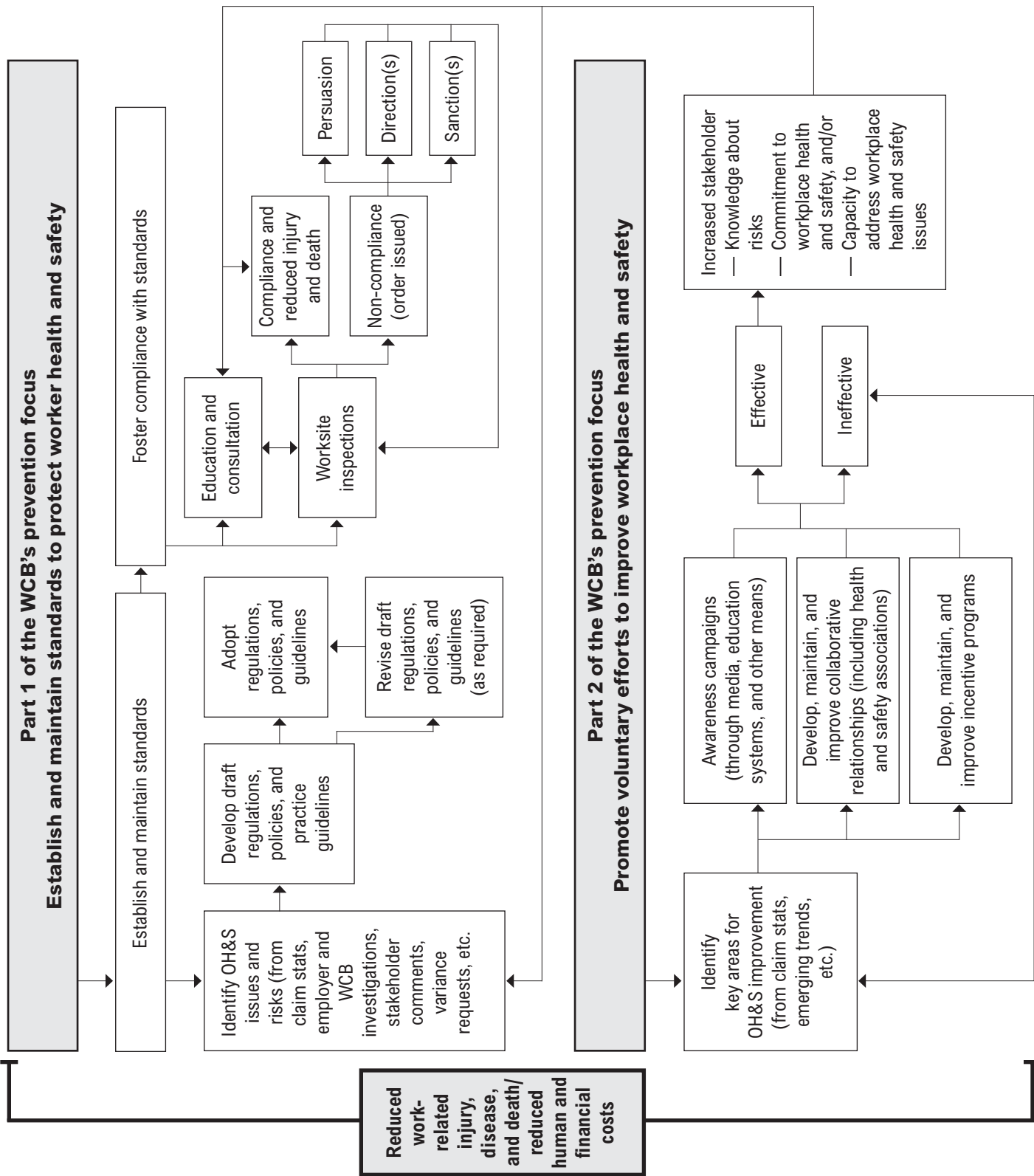
Since its inception, the WCB has been assigned the roles of both supervisory body and champion. The governing statute, the *Workers Compensation Act*, gives the WCB responsibility for establishing and maintaining standards to

protect worker health and safety in B.C., and for promoting occupational health and safety. These parallel areas of the WCB's prevention focus are illustrated in the diagram on page 11.

In order to fulfill these statutory responsibilities, the WCB can, among other things:

- Make and revise workplace health and safety standards, most often in the form of regulations, policies, and practice guidelines
- Undertake worksite inspections and investigations related to occupational health and safety
- Educate and consult with workplace parties
- Direct actions and impose sanctions
- Encourage, develop, and conduct programs to promote workplace health and safety
- Cooperate and enter into agreements with other parties
- Establish grants and awards
- Undertake or support research
- Prepare and maintain statistics, either by itself or in conjunction with other agencies

These tools are not used in isolation; the WCB has a duty to use many of them simultaneously as part of a holistic and integrated approach to worker health and safety. How and when the WCB chooses to use one tool will significantly affect how and when it chooses to use another tool, and the different roles that it and other stakeholders play in preventing work-related injury, disease, and death.



Some examples

If the WCB adopted more performance-based regulations, for example, it would likely have to adjust its approach to compliance as well (see section 2.1). This approach could highlight the need for more educational and consultative services aimed at defining compliance and providing education on what it looks like. For the new first aid regulations, such services would focus on how to conduct the necessary risk assessments.

While the WCB could provide such services, so too could independent industry associations, health and safety professionals, or others. Accordingly, this approach may change stakeholders' expectations about the role that associations play in establishing control measures and identifying and communicating best practices.

By contrast, a more prescriptive regulatory model would assume that employers and others understood their obligations and the necessary control measures, thus allowing for a compliance model that focused more on enforcement and sanctions. Again, while the WCB could assess the level of compliance through workplace inspections, so too could other parties, such as auditors.

The type of regulations the WCB adopts also has implications for the regulation review process (see section 2.2). A prescriptive approach would require a responsive, ongoing regulation review model to ensure that the existing standards are relevant, appropriate, and effective. While the same result would be sought under a performance-based system of regulations, such standards are less specific and therefore more adaptable to changing work environments.

This Health and Safety Initiative does not advocate either of these approaches; rather, it simply illustrates how the WCB's approach to prevention will likely affect the roles that it and others play in promoting workplace health and safety.

More information about other contemporary approaches to the roles parties play in preventing work-related injury, illness, and death is set out in Appendix 7.

2

Part I of the WCB's Prevention Focus

Establishing and Maintaining Standards to Protect Worker Health and Safety

2. Part 1 of the WCB's Prevention Focus

Establishing and Maintaining Standards to Protect Worker Health and Safety

2.1 The Nature of Regulations

The WCB is responsible for establishing and maintaining standards to protect worker health and safety in B.C. These standards are set out primarily in the Occupational Health and Safety Regulation. This section examines the nature of these regulations and provides an overview of how they interact with other workplace health and safety standards.

The regulation

The next section provides an overview of how these standards are developed and updated over time.

The standards set out in the Regulation identify and address specific work-related risks. They consist of:

- Core requirements that apply to most workplaces, such as conducting workplace inspections, correcting unsafe conditions, and having an occupational health and safety program
- Specific requirements that apply to:
 - particular health and safety hazards (such as chemical and biological substances and confined spaces)
 - specific industries (such as construction, agriculture, forestry operations, and oil and gas)
 - specific activities (such as evacuation and rescue and blasting)

These requirements operate in conjunction with other workplace health and safety standards set out in:

- Part 3 of the *Workers Compensation Act*, maintained by the provincial government, which defines the general duties of particular workplace parties, including employers, workers, supervisors, owners, suppliers, directors, and officers
- WCB policy and practice guidelines, which strive to help workplace parties understand and meet technical regulatory requirements

An example

In many situations, a workplace party's obligations are set out in multiple and overlapping provisions in the Act, the Regulation, policy, and practice guidelines. For example, when falling trees, forestry workers are bound by the following standards, among others:

- A general duty to take reasonable care to protect their health and safety and the health and safety of other persons who may be affected by their acts or omissions at work under section 116(1)(a) of the Act
- A general duty to not carry out a work process if they have reasonable cause to believe that doing so would create an undue hazard to a person's health and safety under section 3.12 of the Regulation
- A specific duty not to try to fell a tree until they have:
 - Received and documented appropriate training that was acceptable to the WCB

- Ensured that all workers were clear of the area within a radius not less than twice the height of the tree
- Ensured that any obstructions were cleared, and a safe escape route to a predetermined safe position had been prepared, under sections 26.22 and 26.24 of the Regulation

As can be seen in the chart below, some regulatory standards look like rules, defining what actions a party must take by specifying particular behaviours, technologies, processes, or procedures, while others look more like results, setting general or specific performance goals and allowing individuals and firms to decide how to achieve them.

As suggested by the example above, the nature of a regulatory requirement will significantly affect the roles that workplace parties play in addressing workplace health and safety. Under prescriptive standards, the WCB establishes a comprehensive set of specific actions or processes that entities must follow. By doing so, the WCB takes responsibility for determining how the objectives of the legislation will be met. Workplace parties must simply follow these requirements.

Under performance-based standards, the WCB simply sets the objectives and leaves workplace parties with the responsibility and more active role of determining how these objectives can be met.

In some cases, the regulations include a mix of prescriptive and performance-based elements. Section 4.58 of the Regulation, for example, provides that guards in areas that are not part

Prescriptive and performance-based standards

The Regulation standards have traditionally taken one of three forms:

- *Prescriptive requirements*, which focus on process and are specific and objective rules designed to prompt specific actions, usually without express reference to the desired result
- *General performance-based requirements*, which focus on the end result and are general and subjective objectives designed to prompt broad outcomes, without specifying how they are to be achieved
- *Specific performance-based requirements*, which focus on the end result and specific and objective goals designed to prompt specific outcomes, without specifying how they are to be achieved

Hypothetical regulation to promote safe air quality		
Prescriptive	Specific performance-based	General performance-based
Employers must keep the eight-hour time-weighted average level of asbestos in a workplace below 0.1 fibres/cubic centimetre by using containment ventilation and wetting procedures.	Employers must keep the eight-hour time-weighted average level of asbestos in a workplace below 0.1 fibres/cubic centimetre.	Employers must ensure that worker health is not adversely affected by harmful air quality.

of a building must meet specific criteria set out in the regulations or “other standard acceptable to the WCB.” Accordingly, workers, employers, and other workplace parties can choose whether they would prefer to meet the criteria specified in the Regulation or take a more active role by proposing an alternative approach that may provide equal or greater safety protection.

In order to facilitate a discussion about the nature of regulations, the following table sets out the most commonly cited benefits and challenges of using prescriptive and performance-based regulations. (See Appendix 3 for a more detailed overview of this topic.)

Regulation	Benefits	Challenges
Prescriptive	<ul style="list-style-type: none"> • Effective way to address risks when the means of control are clear, commonly accepted, or standardized, and unlikely to change over time • Establish clear limits on the obligations of workplace parties • Relatively easy for workplace parties to understand and implement • Help level the playing field by requiring that all parties take the same steps to ensure worker health and safety 	<ul style="list-style-type: none"> • Not practical to have regulation regarding every action (volume and complexity may be unmanageable) • Less adaptable to changing work environments and unforeseen circumstances and thus must be reviewed and updated regularly • Can prevent companies from adopting an equally effective (and perhaps less costly) means to achieve the desired result • Challenging for firms that operate in different jurisdictions • Focus on adherence with the minimum standard rather than on broader efforts to improve workplace health and safety
Performance-based	<ul style="list-style-type: none"> • Effective way to address risks when there are several possible controls or controls are relatively complex • Can accommodate technological change and the emergence of new hazards and thus do not need to be updated as frequently • Workplace parties can take different and appropriate approaches to achieve health and safety outcomes • Encourage industry-specific and workplace innovation and leadership, which may lead to improved standards 	<ul style="list-style-type: none"> • May not provide enough guidance to smaller employers, who may lack the expertise or resources to devise site-specific solutions • Practice guidelines can take the form of rules they were supposed to replace • Focus on end result and thus may fail to identify and correct potential problems before the worker health and safety is compromised

Some of the cited challenges can be mitigated, at least on a short-term basis. If, for example, employers or workers think that a prescriptive regulation does not adequately address the needs of their worksite, they can apply to the WCB for a variance. If granted, this variance would operate as a short-term limited exemption from the specific regulatory requirement. In order to qualify for such a variance, the party would have to demonstrate that an alternative approach would afford workers equal or greater protection or have substantially the same purpose and effect as the regulatory requirement. In practice, such variances are not commonly used.

Similarly, if a party thinks that a performance-based regulation is vague and difficult to implement, he or she could refer to the WCB's policies and/or practice guidelines for more guidance. Practice guidelines would provide such a party with at least one example of how he or she could meet the regulation's objective.

Regardless of what type of regulations the WCB adopts, it has the statutory mandate to ensure that workplace parties meet the specified standards. The manner in which the WCB measures compliance and performance differs depending on the nature of the regulations. To measure compliance with prescriptive regulatory standards, worksite inspectors determine if workplace parties are using the specified methods for reducing health or safety risks.

For performance-based regulatory standards, inspectors draw upon different skills and knowledge to conduct worksite inspections. First, they must determine what method(s) a workplace party is using to reduce health and safety risks

and then they must assess whether those chosen methods effectively meet health and safety objectives. Under either system, the WCB will respond to those who fail to meet the standards by taking the necessary steps to motivate their compliance.

(See Appendix 4 for more information about other contemporary approaches to regulations.)

2.2 Regulation Review and Development Process

The Board of Directors of the WCB is different from its other Canadian counterparts in that it has the unique authority to make occupational health and safety regulations. The WCB is also responsible for conducting an ongoing review of the Occupational Health and Safety Regulation to ensure that the regulatory requirements are consistent with current workplace practices, technological advances, and other changes affecting occupational health and safety. Before making any such changes, however, the WCB is required to consult with stakeholders. This chapter provides an overview of how the WCB seeks to fulfill this responsibility.

For 2005, the WCB has implemented a new regulation review and development process. This process entails working in conjunction with stakeholders such as technical experts, workers, employers, and their associations to determine:

- Which regulatory issues to review and address in the short and long term
- The most appropriate type of regulation to propose

Issue prioritization

To begin the process of prioritizing issues for regulatory review, the WCB consolidates a list of issues identified by a committee of senior WCB staff from across the organization. The list is segmented according to how quickly each issue can be resolved. Issues are also prioritized based on such criteria as the WCB's strategic objectives, stakeholder comments, and resource requirements.

The list is then reviewed by a standing stakeholder committee composed of representatives from the WCB, the worker community and the employer community (the Policy and Practice Consultative Committee), as well as other representative stakeholders.⁸ These parties are invited to identify additional issues for review and/or comment on the suggested prioritization and time frame for considering each issue.

The Board of Directors then considers a draft workplan in light of internal and external concerns, resource requirements, and the organization's overall strategic direction before it approves a list of priorities which guides the regulation review and development process over a three-year period. During this time, a subcommittee of the Board of Directors meets regularly to discuss emerging issues and determine if adjustments to the workplan are required.

Regulation development

With the list of regulatory issues in hand, the WCB works in conjunction with increasingly broad

groups of stakeholders to develop and refine proposed regulatory amendments, as required.

First, the WCB reviews proposed regulatory amendments with small groups of stakeholders who have direct experience in the affected industry sector and a working knowledge of the regulation under consideration. These face-to-face sessions are intended to ensure that proposed regulatory changes reflect the practical realities and meet the technical requirements of workplaces. The sessions provide an opportunity to discuss the rationale for each proposed change and to identify and address potential health and safety implications and/or implementation challenges.

Then the Policy and Practice Consultative Committee reviews and comments on a revised version of the proposed regulatory amendments.

Finally, proposed amendment packages – with an explanation of the reasons for the proposed changes – are released to all stakeholders who can voice their comments during a formal public hearing. The hearing is the most inclusive stage of consultation in the regulation review process.

Public hearings

While the WCB is required under the *Workers Compensation Act* to hold at least one public hearing before making regulatory changes, it has held hearings at a number of venues across the province in the last few years. In 2004, for example, the WCB held oral hearings in Prince George, Nanaimo, Kelowna, Richmond, and Nelson.

⁸ These stakeholders include the B.C. Federation of Labour, the WCB Employers' Forum, the Employers' and Workers' Advisers Offices of the B.C. Ministry of Skills Development and Labour, the Workers' Compensation Advocacy Group, Council of Construction Associations, Health Employers Association of B.C., Mining Association of B.C., Business Council of B.C., and Aon Reed Stenhouse.

The level of stakeholder involvement at this stage has traditionally depended on the nature of the proposed amendments. Changes to core requirements that apply to most workplaces (such as workplace violence assessments), and changes to numerous industry requirements that affect a large number of stakeholders (such as those which apply to the construction sector), attract more attention than discrete housekeeping changes that affect fewer stakeholders.

Employers, unions, employer associations, joint worker-employer industry associations, and local government representatives are typically quite vocal in this process. Joint health and safety committee representatives, manufacturers, suppliers, safety consultants, and training agencies have also made submissions.

Engaging individual non-unionized workers (who make up approximately 65% of the province's paid workers) in the regulation review process has, however, traditionally been a challenge. These stakeholders do not typically comment on proposed regulatory changes.

The WCB concludes the regulation review process by using stakeholder comments to revise the proposed amendments where appropriate, and to the extent permitted by law, before submitting them to the Board of Directors for consideration.

2.3 Compliance with Standards

Following an examination of how the WCB establishes and maintains workplace health and safety standards, the next two sections provide an overview of how the WCB fosters compliance with these health and safety standards. In short, the WCB uses a number of compliance tools to achieve this goal, including providing education

and consultation in the workplace, inspecting worksites, directing behaviour, and imposing various sanctions. Doing so should benefit both workers and employers because broad compliance can:

- Decrease the likelihood of work-related injury, disease, and death, and thus improve workplace health and safety
- Lessen or eliminate the competitive advantage that one party might otherwise obtain by failing to meet the standards

The WCB's compliance efforts begin with a number of resources and services, such as practice guidelines, on-site presentations, and awareness campaigns aimed at helping employers and employees understand workplace health and safety standards. This approach is based on a belief that most people will meet the necessary requirements if they know about them and understand their importance.

Inspecting worksites

Recognizing that these resources and services may not meet the needs of all workplace parties and that further action may be required to motivate compliance, WCB officers monitor the level of compliance by conducting worksite inspections. These officers can enter any workplace without a warrant and, with few exceptions, are required to conduct health and safety inspections without prior notice to employers, labour unions, or other persons.

These monitoring activities are initiated by (1) worker complaints, anonymous tips, or requests for a visit; (2) random worksite inspections; or (3) planned worksite inspections and investigations.

Most planned inspections focus on employers and industries that have been classified as high risk because:

- They have historically experienced a higher-than-average rate of work-related injury, disease, or death
- They comprise a significant number of large employers and thus might have a higher volume of injuries, diseases, and deaths, and/or
- They have recently confronted a particular work-related health and safety issue or are forecasted to do so shortly

If an officer determines that one or more workplace party is not meeting the standards, he or she is required by policy to issue an order directing the responsible party (or parties) to correct the violation. While such an order may be sufficient to motivate compliance, officers may also address non-compliance by:

- Encouraging the responsible party or parties to correct the violation by identifying the problem and advising them how to resolve it; or
- Proposing a discretionary sanction such as an administrative penalty to motivate the responsible party or parties to comply (see section 2.4 for more information)

The decision-making model

In practice, once orders are issued, WCB officers will assist the worksite to achieve compliance by adopting a hard, soft, or neutral approach, depending on which technique they determine will be most effective.

In order to maintain consistency in decision-making within this broad discretionary framework, the WCB has adopted some guiding parameters for WCB officers. Officers generally choose between engaging in persuasive, compulsive, or punitive action by evaluating the nature of the violation.

For most violations, officers typically determine that the issue has arisen primarily from a lack of knowledge of a required solution. They will likely engage in persuasive action by providing educational and consultative advice and assistance.

If the violation involves an imminent danger or a high risk of serious injury, serious illness, or death (considering the likelihood of an injury, illness, or death occurring; the number of workers affected; and the likely severity of any injury or illness), WCB officers will generally take corrective action before leaving the site, to ensure workers are not at risk.

Stop-work orders, for example, may be issued when an imminent danger exists that cannot be eliminated immediately because the work needs to be stopped for an extended period of time to explore corrective options, and/or the corrective action affects a large area.

If the officer concludes that the compliance issue has arisen out of a lack of concern for health and safety issues in general and there has been neglect, complacency, or willful non-compliance, the WCB will be more likely to propose a sanction to motivate compliance.

Alternatively, officers may issue a warning letter if they feel it is more appropriate. While the WCB has the authority to apply to the B.C. Supreme Court for an injunction to restrain

or require certain action, this is not usually done. It is considered only if an employer (or other workplace party) fails to comply with a previously issued order and there is a continuing imminent danger. (This decision-making model is illustrated on the next page.)

See Appendix 5 for more information about other contemporary approaches to compliance.

2.4 Direction and Enforcement

As mentioned in the previous section, officers who determine that a violation has arisen due to a lack of concern for health and safety must decide how to address this non-compliance. This section provides an overview of how the officers decide whom to hold responsible for violations and which enforcement mechanisms to use.

Whom to hold responsible

First, the officer must decide who is responsible for the violation. In many circumstances, this responsibility may lie with more than one person because under the *Workers Compensation Act*:

- All workplace parties, including employers, workers, supervisors, owners, suppliers, directors, and officers, bear some responsibility for taking steps to safeguard the health and safety of workers
- More than one person may play the same role (such as employer or owner) at a particular worksite. Under section 106 of the Act, for example, the term “owner” is defined broadly to include both the entity that holds legal title to a building, such as a real estate developer, and the entity that rents it for business purposes, such as a consulting firm

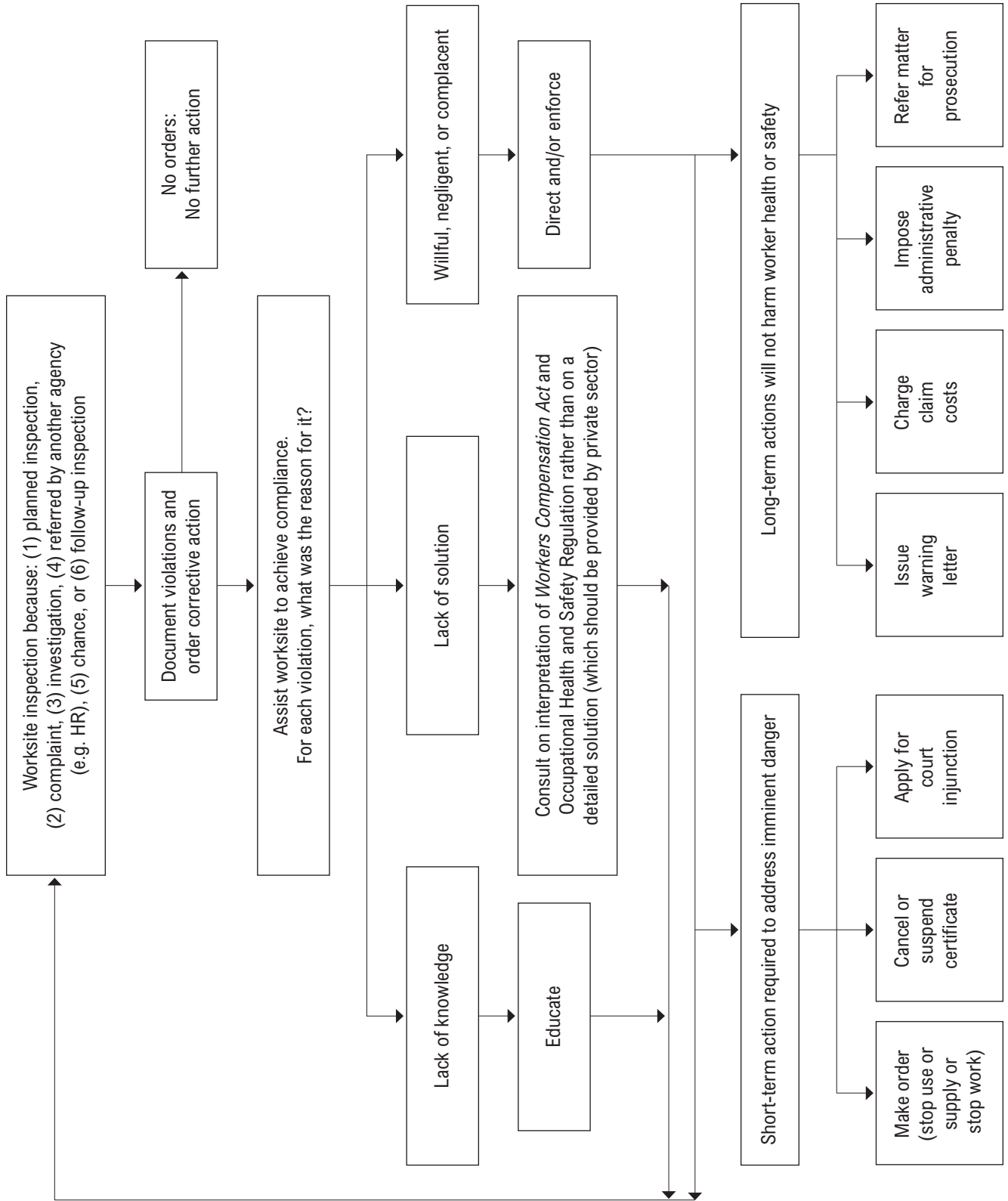
In order to determine which party or parties to hold accountable for failing to meet workplace health and safety obligations, WCB officers usually consider a number of factors relating to each party’s ability and actions to prevent a hazard. This practice is consistent with Part 3 of the Act, which provides that persons who have the authority and ability to affect the occupational health and safety of workers should bear that responsibility. In recent years, this practice has become increasingly difficult, as the evolution of multi-layered operating structures – populated by contractors, subcontractors, independent operators, and workers – has led to an increasingly fragmented employer-employee relationship.

Which enforcement mechanism(s) to use

Once an officer has decided which party to hold accountable for a workplace health and safety violation, the WCB must decide which enforcement mechanism, if any, to use. The WCB has the statutory discretion to:

- Cancel, suspend, or place conditions on the use of a certificate, such as a first aid or blasting certificate
- Impose an administrative penalty
- Charge all or part of the compensation payable, in respect of an injury, death, or occupational disease
- Refer a case to the Crown for possible prosecution

Compliance — The decision-making model in British Columbia



The WCB makes this decision on a case-by-case basis, guided by the provisions of the Act and policy, which specify when each enforcement tool may be used, which parties they may be applied to and, in some cases, what the maximum penalty is.

All the enforcement mechanisms, except administrative penalties and references to the Crown Counsel for possible prosecution, may be used concurrently.

While not categorized as such, the WCB's approach to enforcement is based on a ladder of escalating enforcement rungs, which may be applied in sequence depending on the seriousness and repetitiveness of the offence(s).

The WCB is, for example, much more likely to issue an order (a directional tool) before imposing an administrative penalty (an enforcement tool) and is much more likely to impose an administrative penalty before referring a case to the Crown for possible prosecution. The WCB rarely charges claim costs against an employer.

See Appendix 6 for information about other contemporary compliance tools. Key among them is the federal government's ability to charge workplace parties with criminal negligence if they recklessly or wantonly disregard the duty to take reasonable steps to prevent work-related harm to any persons.

Enforcement tool	To whom and when the tool may be applied	Maximum penalty
Cancel, suspend, or restrict the use of a certificate	To a certificate holder when the WCB has reasonable grounds to believe that he or she has breached a term or condition of its use or has failed to meet an occupational health and safety requirement or standard	Not applicable
Administrative penalty	To an employer when it has failed to (a) take sufficient precautions to prevent work-related injuries or illnesses, (b) meet workplace health and safety standards or requirements, or take directed action, or (c) provide a safe workplace and safe working conditions; and it has failed to exercise due diligence to prevent these circumstances	Approximately \$500,000
Claim cost charge	To an employer when the WCB believes that a worker's work-related injury, disease, or death was due substantially to the employer's (a) gross negligence, (b) failure to adopt reasonable prevention measures, or (c) failure to meet a workplace health and safety standard or take directed action	Approximately \$44,500
Refer to the Crown for possible prosecution	Any workplace party, including a worker, employer, supplier, owner, officer, or director, who fails to meet a workplace health and safety standard or to take directed action	\$550,000 and/or six months in prison for a first conviction; approximately \$1,000,000 and/or 12 months in prison for a subsequent conviction ⁹

⁹ Additional possible court sanctions include an order directing the person to (1) perform community service, (2) publish the facts relating to the offence, (3) pay the WCB an amount toward research and public education, and (4) post a bond to ensure future compliance (section 219 of the *Workers Compensation Act*).



3

Part 2 of the WCB's Prevention Focus

Promoting Voluntary Efforts to Improve Workplace Health and Safety

3. Part 2 of the WCB's Prevention Focus

Promoting Voluntary Efforts to Improve Workplace Health and Safety

3.1 Collaborative Relationships

The WCB strives to build a shared sense of ownership of, commitment to, and capacity for improving workplace health and safety by establishing, developing, and maintaining collaborative relationships with stakeholders. The Board of Directors firmly believes that together the WCB and its stakeholders can continue to reduce work-related injury, disease, and death in B.C. In this regard, the WCB has the statutory duty to encourage programs to promote workplace health and safety, and to cooperate and enter into agreements with other partners. This chapter provides an overview of some of the ways the WCB seeks to cultivate collaborative relationships.

Industry segmentation

One way in which the WCB has recently sought to establish and maintain collaborative relationships is by restructuring its services around particular industries rather than specific geographic regions. Under this industry segmentation approach, many WCB staff now provide one or more industries with integrated worksite monitoring, claim processing, return-to-work, and other related services. In this manner, the WCB hopes that specialized teams of staff will develop a better understanding of the particular industries with which they work, which will enable them to:

- Work more closely and co-operatively with workplace parties in those industries

- Stimulate new ideas on how to improve service
- Provide specialized services that recognize and respond to the distinct needs and issues of workplace parties in those industries

Joint programs

The WCB also supports or participates in joint programs or endeavours, which generally fall within one of three categories:

- Large initiatives, such as an analysis of a particular industry's health and safety needs or the delivery of a specific occupational health and safety service (such as ceiling lifts in the health care industry), to which the WCB provides most of the initiative's funding
- Small initiatives, such as a joint venture to develop a safe patient-handling lab at Okanagan University College or to formulate a musculoskeletal injury risk-assessment tool, to which the WCB provides a smaller amount of matched funding
- Partnerships, such as the development and distribution of products and material aimed at young workers, to which the WCB provides primarily non-financial assistance

Health and safety associations

Some of these collaborative relationships have ultimately led to the development of formal industry-specific health and safety associations with the capacity to deal effectively with their own health and safety issues, independently of the WCB. Today, the WCB supports the activities of more than 12 such associations and initiatives in the forestry, construction, agricultural, motion picture and performing arts, fishing, sawmill,

health care, hospitality, and retail industries. The WCB is also currently working with the hospitality and tourism industry, security companies, and city municipalities toward the development of industry-specific associations.

Such associations have promoted the reduction of workplace injuries and diseases by:

- Developing and delivering industry-specific health and safety initiatives, training, services, and products
- Administering incentive programs
- Implementing pilot projects
- Finding other ways to lower the incidence of work-related injuries, diseases, and fatalities in B.C.

These associations have used their industry expertise and influence to secure the support and co-operation of many industry participants, some of whom have not traditionally responded well to the WCB's current approaches.

While the development of these collaborative relationships is not deliberately aimed at improving compliance with workplace health and safety standards, that is sometimes the outcome. Accordingly, the development of such relationships can help the WCB fulfill both the first and second parts of its prevention focus.

Financial assistance

In order to implement effective programs and offer specific services, health and safety associations often require a stable source of financing. Over the years, many industry groups have sought financial assistance from the WCB

through its assessment system. To access and respond to these requests in a fair and consistent manner, the WCB's former governing body, the Panel of Administrators, adopted the following principles:

- The funding must promote the prevention of workplace injuries and diseases and/or the return of disabled workers to work, through education, training, awareness, or other means.
- The funding must address specific issues in the industries, occupations, or other areas covered by the application.
- The funding must not go toward meeting general responsibilities under the *Workers Compensation Act* and Occupational Health and Safety Regulation. Such activities should be funded by individuals who bear these responsibilities.
- Funding preference is given to groups where:
 - The governing body includes representatives of both workers and employers in the industries, occupations, or other areas covered by the request; or
 - The group has members of one group only on its governing body, but representatives of the other group support the proposal

Though these principles continue to be used today, they are currently under review. Since their adoption in 1999, workplace environments and needs have changed significantly and thus these principles may need to be updated.

If the WCB approves a request for funding, it can provide the associations with funds collected from either:

- The employers in the affected industry or industries through a small addition to their assessment, which is the usual approach if a request is limited to a particular industry or industries (for example, employers in the forestry sector fund the Forest Safety Council)
- All registered employers, through a small addition to their assessment (for example, all employers help fund all associations)

In order to ensure the effective use of such funds, the WCB requires that all requests include a report detailing how the money is to be used and which outcomes are to be achieved. In addition, the WCB may:

- Require a formal program evaluation after a program is complete, at certain stages or before further funding is granted; and/or
- Require that a WCB representative participate in the group administering the funding; and/or
- Audit the use of the funds and, where required, terminate the funding

3.2 Financial and Other Incentives

The WCB also strives to prevent work-related injury, disease, and death by developing incentives that promote focus on and commitment to workplace health and safety. In this regard, it has the statutory duty to establish occupational health and safety grants and awards, and to co-operate and enter into agreements with other stakeholders.

This section provides an overview of the WCB's primary incentive programs.

Employer financial incentive system

The WCB's key incentive program is its employer financial incentive system, which ties the amount of insurance premiums that employers pay the WCB to, among other things, specified workplace health and safety-related indicators. This incentive system emphasizes two of the WCB's key messages:

1. Work-related injuries, diseases, and deaths are neither an inevitable nor an acceptable part of doing business
2. All workplace parties can and should play a role in improving workplace health and safety

The foundation of this system is the experience rating program, which is based on the principle that the safer you are, the less you pay. To begin the program, the WCB compares each employer's average claim costs with those of its fellow employers in the same insurance pool. If an employer's costs are lower than the insurance pool average, it receives up to a 50% discount on the base rate of employer insurance premiums. If an employer's costs are higher than the insurance pool average, the WCB applies a surcharge of up to 100% on the base rate of employer insurance premiums.¹⁰

¹⁰ This incentive program is currently limited to a 33.33% discount and a 33.33% surcharge for the construction industry.

Certificate of recognition

In recent years, the WCB expanded its financial incentive system by partnering with certain industry safety associations to implement a pilot project called the Certificate of Recognition (COR) Program. This program provides employers in certain industries with a 5% discount on the base rate of employer insurance premiums (that is, before experience rating adjustment) if they achieve and maintain an effective occupational health and safety system. External auditors appropriate to each industry determine whether an employer's occupational health and safety system is effective by comparing it to predetermined criteria.¹¹

In order to build on these programs, the WCB is considering a proposal to adopt a comprehensive set of employer incentives that would include discounts for health and safety, disability management (return to work), and administrative (system) efficiencies. This comprehensive program could, for example, include an increase of the COR program discount to 10% and an expansion of its voluntary application to all industry sectors and trans-sectoral groups.

While the WCB's incentive programs are not deliberately aimed at improving compliance with workplace health and safety standards, that has sometimes been the outcome.

When considering both existing and new incentive programs, the WCB is aware that the incentives can have other potential effects. Some parties, for example, have suggested that financial incentives that are tied to a firm's claim history could encourage such firms to hide work-related injuries and diseases. This suppression may take various forms. For example, a company may discriminate against workers (through threats of dismissal if claims are filed or occupational health and safety issues are raised). It may outsource the riskiest elements of its business to another entity or change its corporate name. Such practices run contrary to the WCB's prevention mandate and have serious implications for worker health and safety and the compensation system's costs.

¹¹ The Certificate of Recognition Program's audit requirements relate to (a) management leadership and commitment, (b) safe work procedures and written instructions, (c) training and instruction of workers, (d) hazard identification and control, (e) inspection of premises, equipment, workplaces, and work practices, (f) investigation of accidents, (g) program administration, and (h) joint health and safety committee.



4

***Emerging Trends
and Conclusion***

4. Emerging Trends and Conclusion

4.1 Monitoring and Responding to Emerging Trends

B.C.'s workplace environment is experiencing rapid and significant change. The economy is growing, new industries and jobs are emerging, and the composition of the workforce is shifting. These and other changes could have a profound impact on workplace health and safety as new risks and hazards emerge and as expectations around workplace health and safety change. The Board of Directors believes that the WCB should play a leadership role in anticipating and reacting to these changes. As discussed throughout the guide, the WCB engages in numerous activities to achieve this goal.

This chapter provides an overview of some of those key trends and summarizes the WCB's current approach to monitoring and responding to them.

Emerging workplace health and safety trends

Some examples of changes to B.C.'s workplaces include:

- A growing and aging workforce, which could drive up the number of work-related injuries, diseases, and deaths, and/or lead to shortages of trained and experienced workers as older workers retire
- An upward trend in the number of contract, casual, and part-time arrangements as well as multi-layered operating structures comprising prime contractors, subcontractors, and independent operators, which presents unique prevention and communication challenges

- New and/or expanding provincial endeavours, such as hosting the 2010 Olympic Winter Games (which is drawing more workers to tourism and construction-related industries) and permitting increased levels of oil and gas activity

In addition, the WCB's historical statistics indicate that workers will face a shift in work-related health and safety risks in the future. For example, the number of occupational disease claims relative to occupational injury claims has grown over the past 10 years. This phenomenon may be caused, in part, by the emergence of new diseases and infectious agents such as HIV, avian flu, SARS, and the Norwalk virus.

Awareness of mental stress and violence in the workplace, whether it is actual violence or merely the threat of it, has also grown in recent years. These and other work-related health and safety risks will need to be addressed.

Monitoring and responding to these and other trends

The WCB currently monitors and responds to emerging trends in a number of ways. The regulation review and development process includes:

- An ongoing review process to help ensure that the requirements are consistent with current workplace practices, technological advances, and other changes affecting occupational health and safety
- A three-year regulation review workplan to allow the WCB to adopt a long-term planning horizon, as well as a process to add crucial issues to the workplan as they arise

-
- Some performance-based regulations, which may: (1) be an effective tool for addressing workplace health and safety risks when knowledge about those risks is changing quickly, (2) be flexible enough to accommodate technological change and the emergence of new hazards, and (3) encourage innovation
 - Some regulatory requirements that incorporate an industry or technical standard (such as those adopted by the Canadian Standards Association) by reference; these standards are themselves updated regularly to adjust to evolving technical knowledge and expertise.

The WCB's compliance activities, such as worksite inspections, target "high-risk" groups that have been identified as such based on current trends and emerging risks and opportunities.

The WCB's partnership campaigns target specific emerging trends, risks, and opportunities.

Current campaigns, for example, target:

- New and unskilled entrants to the labour market who may replace older workers as they retire
- Industries, such as general construction, that will likely grow in the years leading up to the 2010 Olympic Winter Games
- Work-related injuries and occupational diseases, such as musculoskeletal injuries, that have been increasing in recent years

In addition to the regulation review process, the WCB monitors and responds to emerging issues by way of its research activities, which include:

- Funding research projects to help track and ultimately prevent some work-related injuries, diseases, and deaths
- Increasing awareness that workplace injury, disease, and death are preventable and not an inevitable or acceptable part of doing business
- Research partnerships such as with the Centre for Health Services and Policy Research, which co-ordinates, facilitates, and undertakes multidisciplinary health-related research
- Through the WCB's risk management group, collecting and analyzing data in order to identify and monitor emerging issues and trends; the WCB then uses this information to develop, evaluate, and refine action plans to address these issues

The increased knowledge generated through these activities helps the WCB fulfill both parts of its prevention focus – maintaining workplace health and safety standards and promoting voluntary efforts to improve workplace health and safety.

4.2 Conclusion

The Board of Directors and many of its workplace partners believe that work-related injuries, diseases, and deaths are neither an inevitable nor acceptable part of doing business. They also believe that we can all do more to further reduce, and perhaps one day eliminate, work-related injuries, diseases, and deaths in B.C. More significant and substantial advances in this area will, however, require a coordinated plan for the future and a serious investment by all stakeholders. The aim of this Health and Safety Initiative is to inspire and realize that end.

The Board of Directors thanks you again for taking the time to consider these important issues and looks forward to hearing your views about B.C.'s workplace health and safety system. Your expertise and commitment is essential as we work together to improve worker health and safety and build a better system for the future.





Appendices

Appendices

Appendix 1 The WCB's History and Prevention Focus

This appendix provides an overview of the WCB's history and occupational health and safety mandate. When reviewing this information, you should note that the Board of Directors is open to suggestions that may require a legislative change. That said, the Board of Directors believes that the historic compromise has served the system well and will continue to do so in the future.

The historic compromise

The WCB was established following an agreement in 1917, commonly known as the historic compromise. Under the compromise, workers relinquished their right to sue their employers in the event of a work-related injury or illness in return for the security of benefits, and employers agreed to fund a no-fault insurance system in return for protection from civil suits over work-related injuries or illnesses. In accepting this compromise, workplace parties also assumed certain legal responsibilities for safeguarding occupational health and safety in B.C.

These and other elements of the historic compromise were enshrined in the *Workmen's Compensation Act, 1916*, now called the *Workers Compensation Act* (the Act), through which the WCB was created to:

- Administer the insurance system for the mutual protection of workers and employers
- Promote the prevention of work-related injury, disease, and death and adopt, administer, and collect administrative penalties for contraventions of the rules or regulations

- Assist injured workers to rehabilitate and return to work

The whole province benefitted from this agreement. Immediate benefits to injured and ill workers have lessened the resulting human and economic burden on others. More predictable and stable costs for businesses have increased the likelihood of their financial success and thus of increased productivity and prosperity. As well, the no-fault aspect of the system has freed the courts and people from costly and lengthy litigation.

The WCB continues to operate the no-fault insurance system and to assist those who have suffered work-related injuries or diseases through rehabilitation and return-to-work programs. However, its overarching focus is to work directly with employers and workers, their associations, the government, and other stakeholders to promote and maintain safe and healthy workplaces in B.C. in a financially responsible and forward-looking manner. A key goal is to keep workers and the workers' compensation system healthy by preventing work-related injury, disease, and death.

The WCB's prevention mandate under Section 107 of the Act

- (1) The purpose of this Part [i.e., Part 3, relating to occupational health and safety] is to benefit all citizens of British Columbia by promoting occupational health and safety and protecting workers and other persons present at workplaces from work-related risks to their health and safety.
- (2) Without limiting subsection (1), the specific purposes of this Part are

-
- (a) to promote a culture of commitment on the part of employers and workers to a high standard of occupational health and safety;
 - (b) to prevent work related accidents, injuries, and illnesses;
 - (c) to encourage the education of employers, workers, and others regarding occupational health and safety;
 - (d) to ensure an occupational environment that provides for the health and safety of workers and others;
 - (e) to ensure that employers, workers, and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of each party's authority and ability to do so;
 - (f) to foster cooperative and consultative relationships between employers, workers, and others regarding occupational health and safety, and to promote worker participation in occupational health and safety programs and occupational health and safety processes; and
 - (g) to minimize the social and economic costs of work-related accidents, injuries, and illnesses, in order to enhance the quality of life for British Columbians and the competitiveness of British Columbia in the Canadian and world economies.

The WCB's prevention mandate under Section 111 of the Act

- (1) In accordance with the purposes of this Part [i.e., Part 3 of the Act which is reproduced above], the Board [WCB] has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.
- (2) In carrying out its mandate, the Board has the following functions, duties, and powers:
 - (a) to exercise its authority to make regulations to establish standards and requirements for the protection of the health and safety of workers and the occupational environment in which they work;
 - (b) to undertake inspections, investigations, and inquiries on matters of occupational health and safety and occupational environment;
 - (c) to provide services to assist joint committees, worker health and safety representatives, employers, and workers in maintaining reasonable standards for occupational health and safety and occupational environment;
 - (d) to ensure that persons concerned with the purposes of this Part are provided with information and advice relating to its administration and to occupational health and safety and occupational environment generally;

-
- (e) to encourage, develop, and conduct or participate in conducting programs for promoting occupational health and safety and for improving the qualifications of persons concerned with occupational health and safety and occupational environment;
 - (f) to promote public awareness of matters related to occupational health and safety and occupational environment;
 - (g) to prepare and maintain statistics relating to occupational health and safety and occupational environment, either by itself or in conjunction with any other agency;
 - (h) to undertake or support research and the publication of research on matters relating to its responsibilities under this Act;
 - (i) to establish programs of grants and awards in relation to its responsibilities under this Act;
 - (j) to provide assistance to persons concerned with occupational health and safety and occupational environment;
 - (k) to cooperate and enter into arrangements and agreements with governments and other agencies and persons on matters relating to its responsibilities under this Part;
 - (l) to make recommendations to the minister respecting amendments to this Act, the regulations under this Part or Part 1 of this Act, or other legislation that affects occupational health and safety or occupational environment;
 - (m) to inquire into and report to the minister on any matter referred to it by the minister, within the time specified by the minister;
 - (n) to fulfill its mandate under this Part in a financially responsible manner;
 - (o) to do other things in relation to occupational health and safety or occupational environment that the minister or Lieutenant Governor in Council may direct.

Appendix 2

The WCB's Guiding Principles and Premises

The following shared internal consensus and understanding on key guiding principles, premises, and operating assumptions will frame the Board of Directors' decision about the future state of B.C.'s workplace health and safety system.

We, the officers and agents of the WCB, believe that:

- Our principal focus as an organization is WorkSafe – the promotion of healthy and safe workplaces in B.C. It follows that safety and prevention of injury, occupational disease, and fatalities are our primary concerns and that all other concerns must support our WorkSafe commitment to workers and employers in their sustaining workplace health and safety.
 - Societal change is essential to creating a culture where workplace injuries, diseases, and fatalities are seen as extraordinary but preventable events, and where workers are entitled to return home in the same condition in which they went to work. We play a principal role in promoting public awareness of matters related to occupational health and safety and the occupational environment in order to effect this societal and cultural change.
 - We must uphold and preserve the financial integrity and stability of the workers' compensation system by acting in a financially responsible manner and planning for the future in order to secure benefits for workers; make available and encourage education activities and programs to prevent injuries, diseases, and fatalities; and minimize the costs of work-related injuries, diseases, and fatalities in order to enhance the competitiveness of British Columbia in the Canadian and world economies.
- The best service we can provide to workers and employers is to do everything we can to prevent injuries, diseases, and fatalities from occurring in the first place. Toward this end, we will be forward-looking and responsive to new and emerging workplace environments and will proactively research and evaluate occupational health and safety issues and invest in prevention technologies.
 - In carrying out our functions and duties, we look to add value to the workers' compensation system and to its stakeholders; we also foster a co-operative and consultative relationship with workers and employers that encourages ongoing feedback and advice.
 - WorkSafe is really a system, driven by a number of essential partners: workers; employers; and (by extension) their professional, labour, industry, and safety associations; and government. In this alliance the WCB – as a legislatively mandated participant – will assume important support, enforcement, and direct service roles.
 - As a provincial public-sector agency, we must remain sensitive to the strategic priorities and comply with the legislated directions of the B.C. government in our development and implementation of plans, policies, and programs.

-
- The prevention of workplace injury, death, and disease is our top organizational priority. However, prevention can only succeed through the independent and lead performance of the workplace's direct agents – employers and workers. In this arrangement, we will assist and support workers and employers in creating safe workplaces by promoting a culture of commitment to a high standard of occupational health and safety; by encouraging the education of employers, workers, and others regarding occupational health and safety; by ensuring that those who are in a position to affect the health and safety of workers share that responsibility to the extent of their authority and ability to do so; and by monitoring and enforcing compliance with occupational health and safety legislation and regulation.
 - When a worker is injured or becomes ill as a result of his or her work, the priority of the system must be the employability of that worker. The no-fault historic compromise whereby workers gave up their right to sue in return for a legislated benefit scheme funded by employers remains as the most effective response to such incidents and their conditions. Each of the system's partners must assume key roles in this prerogative – a collaborative exercise of the worker's will and efforts toward rehabilitation and return to work; the employer's duty to accommodate return to work and work continuity; and the WCB's expertise in marshalling rehabilitative and compensation measures.
 - A primary expectation of government organizations is to support service to citizens as customers, enhanced through one-window organizational structures and management practices. Thus, as a public-sector agency, the WCB must be driven by such a service orientation and our goals attained through an organization-wide commitment to and support for the effective front-line delivery of WCB programs and services. Since front-line staff will be the WCB locus of a customer-focused service delivery, they must be delegated a high level of situational program authority and management support in performing such a role. "If we can't serve the customer, we will serve those who serve the customer."
 - We must focus our organizational energies and resources on our core mandates – prevention, rehabilitation, and compensation. Other program and support functions, subsidiary to these core functions, must be managed in such a way as to not distract the energies and attention of the WCB organization and resources from its core functions. "Where your attention goes, your energy goes."

Appendix 3

The Nature of Regulations: Cited Benefits and Challenges

Prescriptive regulations	Performance-based regulations
<p>Benefits</p> <ul style="list-style-type: none"> • They can be an effective way to: <ul style="list-style-type: none"> — Address higher risks when clear direction is needed to prevent injury or disease and when the means of control are clear, commonly accepted or standardized, and unlikely to change over time — Establish clear limits on the obligations of workplace parties — Help level the playing field among employers and suppliers by requiring that all parties take the same steps to ensure worker health and safety — Protect business markets and the investment that some companies have made in health and safety by, for example, requiring that workplace parties use a specific type of equipment • They can be relatively easy for workplace parties to understand and implement. • They are often very specific and thus do not require as many supporting documents as performance-based regulations do. 	<p>Benefits</p> <p>They can:</p> <ul style="list-style-type: none"> • Be an effective way to address risks when there are a number of possible controls, the controls are relatively complex, or knowledge about the risks is changing quickly • Encourage compliance by allowing workplace parties to take different and appropriate approaches (which may be imported from other jurisdictions) to achieving occupational health and safety outcomes • Encourage industry-specific and workplace innovation and leadership, which may lead to cost reductions and improved safety standards • Accommodate technological change and the emergence of new hazards

Prescriptive regulations (continued)	Performance-based regulations (continued)
<p>Challenges</p> <ul style="list-style-type: none"> • It may not be practicable to have regulations prescribing every action a person should take to promote workplace health and safety. The volume and complexity of such regulations could become unmanageable. • Their specific requirements which apply to all workplace parties in all circumstances can: <ul style="list-style-type: none"> — Cause difficulties in certain unforeseen circumstances as they may not be adaptable to changing work environments — Prevent companies from adopting a more practical (and sometimes less expensive) approach to achieve the desired result and thus preclude different solutions that may be appropriate in different circumstances and at different times — Reduce the potential for innovation and continuous improvement — Present challenges for firms that operate in different jurisdictions, as they may have to comply with numerous different jurisdictional requirements all aimed at achieving the same result • Ensuring technical compliance with prescriptive standards can divert attention from broader health and safety concerns. 	<p>Challenges</p> <ul style="list-style-type: none"> • They can add confusion if they allow for too much flexibility and might not provide enough guidance to smaller employers (who may lack the expertise or resources to devise their own solutions) on how to comply. • They often require additional supporting documents such as non-binding practice guidelines or codes of practice (developed by regulators, trade associations, or standards organizations), which set out examples of how workplace parties can meet the general objective. Such guidelines sometimes effectively take the form of rules that the performance-based standards were meant to replace. Further, in some cases, even non-binding guidelines come to be treated as binding rules. • They require a different approach to compliance, as field officers must assess the overall performance of workplace parties rather than catalogue specific violations. • They focus on an end result rather than a current state and thus may fail to identify and correct potential problems and critical conditions before the ultimate result (i.e., worker health and safety) is compromised. • They may lead to an increase in the number of appeals, as compliance can be more difficult to precisely define. • Researchers have neither conducted empirical studies to evaluate their effectiveness, nor undertaken systematic work to show when, where, or how well they work in different regulatory settings.

Appendix 4

The Nature of Regulations: Other Contemporary Regulatory Approaches

Supervisory agencies like the WCB can and have adopted different regulatory systems. Some emphasize prescriptive requirements, some emphasize performance-based requirements, and others emphasize a combination of the two.

1. Prescriptive regulations

Some supervisory agencies have adopted systems composed primarily of prescriptive regulations. They establish a comprehensive set of specific actions or processes without specifying the objectives of these actions or processes. By doing so, the agency takes responsibility for determining how the objectives of the legislation will be met.

For example, most speed limits, which are intended to promote safety on public roadways, are prescriptive. They tell motorists exactly how fast they are allowed to travel without referring to the objective of the limits. Less definitive standards in this area, such as Montana's requirement that motorists drive at a "reasonable speed," have proven problematic. Accordingly, the supervisory body in Montana has reinstated prescriptive speed limits.

Most tax legislation is also prescriptive in nature. Because most companies and individuals would prefer not to pay taxes, a more discretionary system would run contrary to the government's objective of collecting revenue.

2. Performance-based regulations

Some supervisory agencies have adopted systems of performance-based regulations. They set objectives and desired outcomes, and require that regulated entities plan how they can best achieve these goals. Two such performance-based systems include the pure performance-based system and the compliance plan approach.

The pure performance-based system

In a pure performance-based system, a regulated entity chooses whether it would like to meet these objectives by:

- Following the supervisory body's voluntary codes of practice or practice guidelines; or
- Conforming to an established industry-based code of practice; or
- Developing its own compliance plan, if necessary, with the assistance of an industry consultant

The supervisory agency then conducts worksite inspections to determine if the entity's chosen course of action meets the pre-determined objectives.

The compliance plan approach

In the compliance plan approach, regulated entities that choose to develop their own compliance plan must:

1. Release the plan to public scrutiny for a set period of time, and then
2. Submit the plan and the public's feedback to the supervisory body for review

If after considering stakeholder feedback, the supervisory body determines that the plan meets its predetermined objectives, it issues a licence authorizing the entity to undertake certain activities.

B.C.'s Ministry of Forests recently adopted a compliance plan approach to forest management when it replaced its prescriptive legislation and regulations (*Forest Practices Code*) with a more performance-based statutory system (*B.C. Forest and Range Practices Act* and its regulations). With this shift came a new compliance and enforcement system where companies commit to, and are held accountable for, achieving results and strategies.

Under the new system, inspections continue and penalties for non-compliance are stiffer. For example, the government can require forest companies to pay a security deposit up front, in order to encourage licensees to comply with their compliance plan obligations, and to provide the funds necessary to carry out compliance plan activities if a licensee fails to meet its obligations.

Note, however, that:

- Most employers in the forestry industry are large and thus likely to have the resources required to hire industry consultants to formulate compliance plans
- The new legislation also created an independent third party watchdog, the Forest Practices Board, to oversee the implementation of this new approach
- This approach is relatively new – the first compliance plan was approved in late 2004 – and untested

Some people claim that the compliance plan requires greater information gathering and sharing between the supervisory agency and industry participants. Others suggest that this approach would adversely affect workers who would have to rely almost exclusively on the compliance plans adopted by their employers. It would be extremely difficult, for instance, for workers under such a system to point to a specific practice and suggest that it was unsafe.

3. A mix of prescriptive and performance-based regulations

Two approaches combine both prescriptive and performance-based regulations: the core approach and the tiered approach.

The core approach

The core approach is primarily a performance-based system that maintains a core set of prescriptive requirements. In such a system, all regulated activities are judged in relation to a predetermined risk threshold: those falling below the threshold are regulated with performance-based standards; those above the threshold are regulated with prescriptive standards. In such a manner, higher-risk activities are subject to clear, objective, and measurable standards aimed at reducing potential problems; and parties have more flexibility when conducting lower-risk activities.

The US Nuclear Regulatory Commission (NRC) uses the core approach on a case-by-case basis when three of the following four criteria are met:

- If failure to meet the predetermined performance-based standard will not result in an immediate safety concern

-
- If measurable or calculable parameters are available to determine if the performance-based standard is met; in other words, there must be a performance measure and the opportunity to take corrective action if performance is lacking
 - If the performance-based standard is based on objective criteria that can be used to assess performance
 - If the NRC or regulated entity has flexibility in the method used to achieve the desired result

If a regulatory issue meets this viability guideline, the NRC considers whether a performance-based approach would result in opportunities for regulatory improvement, that is, a positive contribution to NRC's performance goals and achievement of a new social benefit. In applying this assessment test, the NRC considers whether a performance-based approach would:

- Maintain safety
- Increase public confidence
- Increase effectiveness and efficiency
- Reduce unnecessary regulatory burden
- Result in a new benefit
- Accommodate new technology, and/or
- Be easily incorporated into the regulatory framework

The tiered approach

With the tiered approach, supervisory agencies maintain a system of prescriptive regulations that apply to all workplace parties except those that opt into and are approved for a performance-based system. The agencies award performance-based licences to parties with good

records that have submitted an adequate plan to maintain worker health and safety or another regulatory outcome.

In this way, regulated entities that have demonstrated that they consistently meet or exceed required standards and can achieve a comparable level of performance through another means are permitted more flexibility in meeting otherwise applicable standards. This approach has been applied broadly to a whole set of regulatory requirements and narrowly to specific areas covered by a single regulation.

The WCB uses this approach in two ways, in certain narrowly defined circumstances. First, the WCB grants requesting workplaces variances – that is, exemptions from specific regulatory requirements – if the employer demonstrates that an alternative approach will give workers equal or greater protection, or that the approach has substantially the same purpose and effect as the regulatory requirement.

Second, some regulatory requirements state that workplaces may adopt an alternative approach to a prescriptive requirement if it is acceptable to the WCB. Section 4.58 of the Occupational Health and Safety Regulation, for example, states that guards and guardrails in areas that are not part of a building must meet specific criteria set out in the regulations or “other standard acceptable to the WCB.”

Other supervisory agencies, such as Sweden's National Board of Occupational Safety and Health have used this approach more broadly. Since the early 1990s, the Swedish regulator and the Labour Inspectorate have allowed large and medium-sized companies to develop and

adopt occupational health and safety (OHS) management systems rather than comply with prescriptive regulatory requirements. The regulators conduct system inspections to ensure that there is progress in the development of an OHS management system. They target high-level management, and focus on:

- The system of organization of work
- Discussions with safety delegates
- Random checks on actual working conditions to make sure that workplace parties are implementing OHS management systems

Small organizations remain subject to traditional approaches of inspection.

B.C.'s Ministry of Water, Land, and Air Protection has also used the tiered approach more broadly and has received very few applications for a performance-based licence. The Ministry believes

that this reluctance stems primarily from liability concerns and speculates that companies may be more comfortable with a prescriptive system, which not only tells them what they have to do to ensure a regulatory outcome but also protects them from negligence claims. The Ministry also suggests that industry experts who would theoretically help companies formulate a plan to achieve a comparable level of performance may be reluctant to endorse one approach in case it fails and leads to their own liability.

Some people maintain that adopting tiered regulations will mean increased costs to the supervisory agencies and increased regulation and bureaucracy for stakeholders. Others believe that, like the compliance plan, this approach requires greater information gathering and sharing between the supervisory agency and industry participants (especially workers who may not be able to access the level of safety at their workplaces as easily).

Appendix 5

Compliance: Other Contemporary Practices

Supervisory agencies like the WCB encourage compliance with mandatory standards by adopting different approaches to inspection and non-compliance, such as persuasion, direction, punishment, or a combination thereof. Some of these approaches are summarized below.

1. Common inspections and punishments

The deterrence approach is based on the belief that employers are driven primarily to maximize profits and will comply with the law only when it is likely that non-compliance will be detected and they will incur relatively swift and tough sanctions. Proponents believe that employers will comply with mandatory standards only if the potential costs of non-compliance are greater than the costs of compliance. Accordingly, the frequency of inspections and the fines imposed are important elements in the equation.

Advocates also suggest that deterrence takes two forms:

- General deterrence, where parties will be less likely to commit violations if they know these activities may be detected and penalized
- Specific deterrence, where parties who violate the rules will be less likely to repeat the violation if they are caught and penalized

Supervisory bodies that endorse the deterrence approach tend to have a regular and visible presence in the field by, for example, conducting a large number of inspections or enforcement visits; have a wide range of enforcement tools,

some of which can be applied quickly; and use their discretionary enforcement tools often.

For example, Australia uses this approach in some situations where employee representatives also act as inspectors of their own workplaces and have the power to issue provisional improvement notices and stop work in some jurisdictions. In Ontario, the Workplace Safety and Insurance Board recently implemented an enhanced enforcement strategy that included hiring 200 new enforcement staff. The goal is to ensure they visit targeted firms at least four times a year. The Ontario Board also expanded its officers' ability to issue fines on the spot.

2. Targeted inspections, common persuasion, and occasional punishment

The persuasion approach is based on the belief that most parties will voluntarily comply with the law if they understand it and recognize its importance. Proponents advocate targeting inspections, or consultation visits, at firms that engage in particularly risky activities and/or have displayed poor past performance, based on data derived from injury statistics, workers' compensation claims, and other qualitative data.

Accordingly, entities who consistently meet established standards or achieve higher standards are subject to less scrutiny, and the regulator adopts more of an auditing role. By contrast, the regulator adopts a more interventionist role with entities who have a poor performance history.

When inspection officers encounter non-compliance, they act as supporters, collaborators, and facilitators and thus usually engage in educational and consultative action to help

parties achieve voluntary compliance. They reserve a series of progressively tougher enforcement tools for situations where persuasive activities were not effective.

Some examples

Denmark's occupational health and safety supervisory body has used targeted inspections since the 1980s. Companies willing and able to comply receive the least attention from inspectors, while those neither willing nor able to comply receive the most attention from inspectors. Thus, the supervisory agency focuses its efforts on firms with the greatest need and supports the efforts of firms that are already working to improve workplace health and safety.

The Workplace Health and Safety Department of the Alberta Ministry of Human Resources and Employment also uses this approach. It places a strong emphasis on voluntary compliance, backed where necessary by a hierarchy of enforcement mechanisms. In doing so, it often responds to non-compliance by asking the responsible party to sign a voluntary contractual commitment to take appropriate corrective actions by a mutually agreed upon date.

Maine's Occupational Safety and Health Administration (OSHA) has also used the persuasion approach. It gave 200 employers with higher-than-average injury rates a choice under the unofficial motto, "choose your OSHA." One option is to conduct a comprehensive hazard survey of their own facilities; make use of OSHA provided information, advice, and technical assistance; correct all identified hazards; and implement a comprehensive health and safety program with employee involvement.

Employers who did not select this option or who failed to maintain their commitment to the program were placed on the primary inspection list and targeted for a traditional comprehensive inspection. From 1991 to 1993, after the first full year of the program's operation, worker compensation claims in Maine reportedly dropped by 35%.

The Maine OHSA also implemented a Safety and Health Achievement Recognition Program, which recognized small employers that operated exemplary safety and health management systems. As long as firms maintained their certificate of recognition, they were exempt from programmed inspections.

3. Self-administered inspections and compliance

In the self-regulation approach, either all or a portion of the employers manage their own occupational health and safety, rather than relying on an external supervisory body. These companies voluntarily

- Determine the risks at work
- Introduce control measures to eliminate or minimize worker exposure to those risks
- Conduct and report their own audits or inspections

Their audits or inspections are subject to some independent third-party verification in the same way that the Securities and Exchange Commission relies on certified public accountants to vouch for the legitimacy and completeness of financial statements. If the third-party finds that an internal inspection report or audit is inaccurate, the supervisory body applies tough sanctions.

Some examples

In Queensland, Australia; Singapore; Belgium; and the Netherlands; firms over a certain size must hire professional health and safety officers to provide expert advice and help them meet their statutory obligations. The regulatory agency maintains some control over worker health and safety in these jurisdictions by either:

- Specifying the type of training that such officers must undergo; or
- Certifying or licensing the officers

Similarly, in Minnesota, the *Environmental Improvement Act* encourages small and medium-sized employers to conduct their own inspections and report the results to the regulator. The supervisory body, in turn, reviews these results and follows up as required.

The printing industry in Minnesota has established a slightly different program whereby an independent corporation (approved by the supervisory body and the local industry association) provides auditing services to industry association members. Rather than submitting the results to the supervisory body, the corporation delivers them to the audited firm for follow-up. If the third party identifies

compliance problems, the firm submits a compliance plan to the corporation, which verifies the firm has taken the proper actions.

If a firm carries out its compliance plan, the supervisory agency rarely gets involved. If, however, a firm fails to meet its compliance plan, it can no longer participate in the program and it will once again become subject to the inspections and stiff sanctions of the supervisory body.

Other jurisdictions have adopted an approach where firms can seek a recognized occupational health and safety certification from an external organization as a means of self-regulation. Such programs focus on implementing continuous improvements in occupational health and safety, rather than on specific standards or workplace procedures.

OHSAS 18001, for example, sets out requirements for an occupational health and safety management system that goes above and beyond mandatory standards. Some of the world's leading national standards bodies, certification bodies, and specialist consultants created this standard to help organizations control their occupational health and safety risks and improve their performance.

Appendix 6

Compliance Tools: Other Contemporary Approaches

Regardless of what approach a regulatory body like the Workers' Compensation Board of B.C. takes to imposing and monitoring standards, it can use a variety of tools to influence compliance.

This appendix provides an overview of some tools that regulators use to encourage compliance. Some of these are variations on the WCB's existing tools, while others illustrate other contemporary practices.

Variations on the WCB's existing tools

Financial penalties

A small number of supervisory agencies in Canada, including the WCB, can fine workplace parties who fail to comply with workplace health and safety standards without having to go through the court system.¹² The fines typically come in one of two forms: administrative penalties and/or tickets. The WCB currently has the authority to apply penalties only.

Unlike tickets, administrative penalties carry much higher fines and cannot be imposed on the spot. Rather, there is a lengthier process to ensure fairness of collection, verification, and appeal. Administrative penalties can usually be imposed on employers only – not workers. They are used most often in Canada when:

- The violation results in a high risk of serious injury, serious illness, or death; or
- The employer has committed multiple violations, failed to comply with a previous order, or has knowingly or recklessly violated the workplace health and safety standards

In some jurisdictions, officers can impose tickets on any workplace party including workers, supervisors, and employers. Typically this is done when a violation does not raise complex legal or factual issues. Most often they use tickets for violations that create a high risk to workers or have historically resulted in fatalities.

The amount of an administrative penalty varies from jurisdiction to jurisdiction. In B.C., penalties can be as high as \$500,000. In Manitoba, penalties carry a fine ranging from \$1,000 to \$5,000.

The amount of a ticket also varies depending on the recipient and the nature of the violation. In New South Wales, Australia, the maximum ticket is \$50 for a worker and \$550 for an employer. In Ontario, tickets for violations in the construction, mining and diving, and industrial sectors range between \$195 and \$300, depending on the nature of the violation. If a worker fails to use a chainsaw safely, for example, the worker, supervisor, and employer can all be fined. Typically, workers and supervisors are fined less than employers.¹³

¹² Financial penalties are used by the occupational health and safety supervisory bodies in Ontario, Manitoba, Nova Scotia, and B.C.

¹³ Other jurisdictions where safety inspectors are given the power to issue on-the-spot fines include the Yukon, and New South Wales and the Northern Territory in Australia.

Prosecutions / court-imposed sanctions

Many supervisory agencies, including the WCB, can bring civil prosecutions against workers, employers, suppliers, owners, and others if they fail to comply with workplace health and safety standards. Successful prosecutions can result in fines and/or jail terms. B.C.'s possible sanctions – a fine of up to \$555,858.32, six months imprisonment, or both – are in line with most other Canadian jurisdictions, though a few have lower ceilings for fines and some do not allow imprisonment.

A slight variation of this approach is to bring criminal charges against those who fail to comply with workplace health and safety standards. The government typically initiates these charges. Successful criminal prosecutions can result in higher fines and longer jail terms than civil prosecutions. In Canada, for example, there is no predetermined limit for a fine or maximum sentence for an individual convicted of criminal negligence causing death is life imprisonment.

In some jurisdictions, a conviction can also bring other penalties, such as a lifetime ban on serving as a corporate director. Because of the seriousness of a criminal conviction and its associated penalties, it requires a higher level of wrongdoing and a more onerous burden of proof than a civil prosecution.

In Canada, anyone who undertakes or has the authority to direct how another person performs work – including directors, executive officers, operations managers, plant managers, and production managers – can be charged with

criminal negligence if he or she fails to take reasonable steps to prevent bodily harm of a worker. The Crown must prove the actions beyond a reasonable doubt rather than simply on a balance of probabilities.¹⁴

The key differences between these tools (i.e., court prosecutions, administrative penalties, and tickets) are the seriousness of the sanction and the amount of time required to impose it. While administrative penalties arguably provide a more timely and efficient means of motivating compliance than court prosecutions, they are not as immediate as ticketing. Accordingly, these three tools can be viewed as escalating rungs on an enforcement ladder, with a ticket being the first rung, an administrative penalty being the second rung, and a prosecution being the third rung. Criminal charges, the most serious enforcement rung, would be instituted by the government rather than a supervisory body.

Other compliance tools

Enforceable undertakings / compliance contracts

Enforceable undertakings, or compliance contracts, are based on the belief that most parties will voluntarily comply with the law when they understand it and recognize its importance. When a company fails to meet a workplace health and safety standard, it signs a written agreement with the supervisory body to commit to take certain actions to correct the violation. If these actions are not met by a mutually agreed upon date, the supervisory body may resort to more serious compliance tools. Proponents of enforceable undertakings claim that it is a quick

¹⁴ Other jurisdictions that provide criminal sanctions for failing to meet workplace health and safety standards include the United Kingdom, Ireland, South Africa, Japan, and Germany.

and inexpensive way to motivate compliance, while critics suggest that it is more coercive than collaborative and that monitoring is often resource intensive.

The occupational health and safety supervisory body in Australia has used compliance contracts for some time. While such undertakings may be withdrawn or varied, these measures require the regulator's consent. In addition, if the supervisory body proves that a party has failed to fulfill his or her voluntary undertaking, a court may impose a number of sanctions, including an order to:

- Comply with the undertaking
- Pay the amount the party saved or secured by failing to meet the proper standard, and/or
- Compensate any other person who has suffered loss or damage as a result of the contravention

Similarly, the U.S. Occupational Health and Safety Administration (OSHA) enters into partnership agreements with workplace parties. The aim of these agreements is to identify how the supervisory body and the workplace party can work cooperatively to address critical safety and health issues. The partners agree upon individual responsibilities, identify strategies, and establish goals and performance measures. While such agreements are often made between OSHA and employers, unions, trade associations, local/state governments, and insurance companies may also contribute their expertise and resources by joining a partnership.

Financial loans and grants

Some supervisory bodies motivate compliance by providing financial assistance to those who might perceive finances as a barrier to compliance. In France, the workplace health and safety regulator provides prevention loans to small and medium-sized firms for specified improvements. The goals and timed payments are established following a comprehensive risk assessment. If firms meet the stated goals on time, the loan is converted into a grant. The regulator reports an overall return on investment of 25%. Using a similar approach, the Netherlands offers tax incentives for investments related to workplace health and safety.

Other regulatory bodies help companies to overcome financial barriers by lending them their own expert staff for a certain amount of time. This initiative bridges knowledge or experience deficiencies that may exist among new or small firms. The workplace health and safety regulator in Wyoming lends loss-control consultants to employers to help them reduce their work-related accidents and hence their insurance premiums. These consultants may work with existing health and safety personnel to analyze workplace injuries, develop behaviour-modification concepts, and quantify the financial savings of reducing the frequency and severity of injuries.

Publicity and corporate goodwill

Supervisory bodies also use the media to motivate compliance with workplace health and safety standards. They do this by leveraging a firm's self-interest in maintaining a positive reputation among its customers and suppliers, which in turn contributes to its financial success.

The media can be used positively to recognize and reinforce good performers, or in a negative way to shame and deter poor performers.

Some agencies publicly recognize firms that have demonstrated a commitment to improved workplace health and safety, or bestow special awards on companies that seek to address specific health and safety issues. Some examples include:

- Michigan's Ergonomic Innovation Award and Ergonomic Success Award recognize improvements that reduce traumatic strain/sprain injuries and cumulative trauma disorders.
- Alberta's WorkSafe Award of Distinction recognizes a company's excellence in injury prevention, innovation, disability management programs, worksite employee training programs, employee wellness, and integrated safe health and safety initiatives.

By contrast, other workplace health and safety supervisory bodies, like those in Quebec and Ontario, use the media as a disincentive by publishing the names of companies that have repeatedly violated mandatory workplace health and safety standards or issuing a news release every time a party is fined for an occupational health and safety violation. These techniques may be increasingly effective as information technology, public interest in corporate misconduct, and corporate sensitivity toward brand image continue to grow.

Appendix 7

Roles: Other Contemporary Approaches

Regardless of what approach the WCB takes to compliance, numerous stakeholders – including workers, employers, owners, supervisors, directors, officers, suppliers, manufacturers, engineers, architects, safety professionals, labour unions, associations, educational institutions, researchers, training agencies, professional bodies, and other government bodies – will play a role in fostering safe and healthy workplaces. What role they play and how predominant a role they play will vary.

This appendix provides an overview of the roles that some parties (i.e., workers, employers, labour unions, and industry-based associations) play in regulated areas.

Workers

In order to protect themselves from work-related injuries and diseases, workers in many jurisdictions play the role of caretaker and monitor. Under many workplace health and safety statutes, including B.C.'s *Workers Compensation Act*, workers are responsible for their own actions (such as not engaging in horseplay, avoiding impairment, and wearing protective clothing and equipment) and for monitoring the state of workplace health and safety (by reporting unsafe conditions to supervisors and participating in joint health and safety committees). Most workplace health and safety statutes in Canada protect workers who fulfill these responsibilities from potential disciplinary or other adverse action from their employers.

In B.C., employers and unions, or persons acting on their behalf, are prohibited from taking or threatening to take discriminatory action against a worker who exercises these responsibilities. Discriminatory action includes suspension; layoff or dismissal; demotion or loss of opportunity for promotion; transfer of duties or change of location of workplace; reduction in wages or change in working hours; coercion or intimidation; imposition of any discipline, reprimand, or other penalty; and the discontinuation or elimination of a worker's job.

In some jurisdictions, workers also play a role in worksite inspections and enforcement. In Australia, employee representatives help inspect their own workplaces; in some regions, they can issue provisional improvement notices and/or stop work orders. Similarly, oil and gas sector workers in Oklahoma play a role in ensuring compliance, since they (like any citizen) can institute contempt proceedings if a person fails to comply with the supervisory body's order.

Employers

Employers also exercise a great amount of control over the conditions and practices at their workplaces and thus play a primary role in promoting worker health and safety. Under many workplace health and safety statutes, including B.C.'s *Workers Compensation Act*, employers play the role of caretaker and monitor. They are required to safeguard the health and safety of their workers and to maintain safe and healthy workplaces.

In some jurisdictions, employers also play a role in promoting their own and other firms' compliance. In Virginia, a Safety Network

program encourages large businesses to pair with small businesses to share their expertise and resources. As well, some firms manage their own occupational health and safety by voluntarily:

- Determining the risks at work
- Introducing control measures to eliminate or minimize worker exposure to those risks
- Conducting and reporting their own audits or inspections

Minnesota's practice of encouraging small and medium-sized employers to conduct their own environmental inspections and report the results to the regulator is an example of this practice. (See Appendix 5.)

Labour unions

As representatives of worker rights, labour unions are often involved in workplace safety issues. They often play a key role in advocating for healthier and safer workplaces on behalf of their members. In B.C., the Industrial Wood and Allied Workers Union of Canada urged the Minister of Skills Development and Labour and the WCB to address the unacceptably high number of serious injuries and deaths occurring in the forest sector. This action ultimately led to the establishment of the Forest Safety Task Force, which developed an action plan to eliminate deaths and serious injuries in the industry, and the British Columbia Forest Safety Council, which is working with employers, workers, contractors, and the provincial government to implement this plan.

Similarly, in Michigan several labour organizations recently worked with the Department of Transportation to develop contract specifications to enhance worker health and safety on a large international bridge-refurbishing project. The project, which entails closing the bridge for 18 months, will include safety and health requirements that go beyond current standards.

Unions also play a key role in increasing health and safety awareness. In Washington, more than 350 unions are involved in the workplace health and safety regulator's outreach, education, and compliance assistance program. Although there are few formal requirements for the Alliance Program, the supervisory body and the participating organizations must define, implement, and meet a set of short- and long-term goals related to training and education, outreach and communication, and/or promoting the national dialogue on workplace safety and health.

Industry-based associations

Industry associations also play a role in promoting workplace health and safety among their members. While such associations have traditionally provided educational, outreach, and advisory services, some are now getting more involved in enforcement.

In Ontario, for example, several industry associations are working in conjunction with the workplace health and safety regulator to reach the province's 6,000 riskiest workplaces. Through a joint program, the Ministry of Labour (MOL) targets the top 2% of high-risk firms with occupational health and safety inspections, while health and safety associations target the next 8% of high-risk firms with educational and consultative services.

If the MOL finds that a firm's poor injury rate is due to a lack of knowledge or expertise, it refers the company to the applicable association for educational and consultative services. Similarly, if an association finds that a particular firm is not receptive to educational and consultative services, it refers the firm to the MOL for stiffer action.

Multi-party collaboration/affiliations

In addition to these individual roles, many workplace parties work collaboratively to address specific workplace health and safety issues or target segments of the working population. Employers and labour unions in Oregon's construction industry are working with the

workplace health and safety supervisory body to identify industry hazards; to design and implement a training curriculum for safety personnel, foremen, supervisors, and government staff; and to disseminate industry-based best practices. Initially, these efforts will focus on fall hazards in roofing, scaffolding, elevated areas, and excavations.

Kentucky has also organized a private, non-profit Safety and Health Network to increase workplace health and safety awareness through educational programs, scholarships, and endowments, as well as statewide symposiums. This network includes representatives from the business, labour, government, and academic communities.