

2003/12/16-02

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE BOARD OF DIRECTORS

Re: Prevention Policy Consolidation

WHEREAS:

Pursuant to section 82 of the *Workers Compensation Act*, R.S.B.C. 1996, Chapter 492 and amendments thereto ("Act"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

The policies respecting occupational safety and health ("prevention policies") are found in two sources - the *Prevention Manual* and the *Prevention Division Policy and Procedure Manual*;

AND WHEREAS:

In response to direction from the former Panel of Administrators, the Policy and Regulation Development Bureau ("Bureau") initiated an "editorial" consolidation project to review all prevention policies not found in the *Prevention Manual*, and bring forward recommendations to the Board of Directors for consolidation in the *Prevention Manual* and/or retirement as appropriate;

AND WHEREAS:

The Bureau has presented recommendations to the Board of Directors with respect to consolidating certain policies from the *Prevention Division Policy and Procedure Manual* into the *Prevention Manual* and for retiring certain policies from the *Prevention Division Policy and Procedure Manual*;

AND WHEREAS:

The Prevention Division has drafted and will continue to draft Occupational Health and Safety Guidelines, as required to replace procedural provisions set out in the Prevention Division *Policy and Procedure Manual*;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The policies listed in Appendix "A" ("listed policies") are "retired" from the Prevention Division *Policy and Procedure Manual* and deleted from the *Rehabilitation Services & Claims Manual, Volume II ("RS&CM")*. As of the effective date of this resolution ("effective date"), the listed policies are no longer "policy" as defined by the Board of Director's Bylaw re: Policies of the Board of Directors. The status of these policies as "policy" prior to the effective date remains unaffected by this resolution. They remain applicable in decision-making on historical issues to the extent that they were applicable prior to the effective date.
2. The statements under the heading POLICY in each Item attached as Appendices "B" and "C" are approved and the Items will be consolidated into the *Prevention Manual*.
3. The amendments made to policy item #113.00 of the *RS&CM* as set out in Appendix "D" are approved.
4. This resolution constitutes a policy decision of the Board of Directors.
5. This resolution is effective December 31, 2003.

DATED at Richmond, British Columbia, December 16, 2003.

By the Workers' Compensation Board

**DOUGLAS J. ENNS, CHAIR
BOARD OF DIRECTORS**

APPENDIX "A"

**LIST OF POLICIES TO BE
RETIRED FROM THE PREVENTION DIVISION *POLICY AND PROCEDURE MANUAL*
AND DELETED FROM THE *REHABILITATION SERVICES & CLAIMS*
*MANUAL, VOLUME II***

Certification and Cancellation of Certificates

- 1.9.1 Certification of Industrial Audiometric Technicians
- 11.06 Diver Training and Certification
- 46.06 to 46.16 Certification of Blasters
- 46.24(2) Suspension of a Blaster's Certificate

Disclosure of Information

- 1.3.5 Release of Copies of Inspection Reports
- 1.3.6 Disclosure of Information
- 1.3.6-1 Confidentiality of Complaints
- 1.9.2 Confidentiality of Medical Information

General Principles

- 1.0.0 General Policy Statement – Occupational Safety and Health Division
- 1.1.1 Responsibility of the Board Respecting Occupational Health and Safety
- 1.1.2 Mission Statements
- 1.5.1 Employer – Responsibilities
- 1.5.2 Worker – Responsibilities
- 1.5.3 Safety and Health Committees – Membership
- 1.10.1 Consulting Services to Industry
- 70.0.4.02 Industrial Health and Safety Program

Inspections and Investigations

- 1.3.1 Inspections by Board Officers
- 1.3.1-1 Follow-up Inspections
- 1.3.3 Inspection Reports
- 1.3.3-1 Issuing Inspection Reports
- 1.3.4 Observation Reports
- 1.3.4-1 Issuing Observation Reports
- 1.3.7 Accident Investigation Reports
- 1.3.8 Use Of Cameras and Testing Equipment
- 8.24 Refusal to Work vs. Complaint
- 8.24(5) & (6) Investigation of Work Refusal and Worker Discipline

Orders

- 1.3.2 Orders
- 1.4.2 Penalty Assessments and Levies
- 1.4.6 Closure Orders
- 1.4.7 Prosecutions
- 2.12(1) Compliance with Orders

Miscellaneous Policies

- 0.0.1 Change of Name to Prevention Division
- 1.6.9 Labour Canada Jurisdiction
- 13.01 Application of Permissible Concentrations
- 13.47 Re-circulation of Exhaust Air
- 20.07(D) Spraying of Isocyanates
- 24.04(1)(B) Guarding of Electrical Conductors
- 24.08(2) Tree Trimming in Areas Identified as Hazardous
- 54.18(11) Knots in Wire Rope

POLICY TO BE DELETED FROM THE *REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II*

- 115.20 Significance of Employer's Conduct in Producing Injury

APPENDIX "B"

***PREVENTION MANUAL POLICIES INCORPORATING PORTIONS
OF PROCEDURE 1.3.3-1 AND POLICY 1.4.2
OF THE PREVENTION DIVISION POLICY AND PROCEDURE MANUAL***

**RE: Orders –
General Authority**

ITEM: D12-187-1

BACKGROUND

1. Explanatory Notes

Section 187(1) provides a broad general authority for the Board to make orders for carrying out matters and things regulated, controlled or required by Part 3 or the regulations. This includes authority to make orders in a variety of specific situations set out in section 187(2).

Powers to make orders are also found in other sections of the *Act*.

2. The Act

Section 187:

- (1) The Board may make orders for the carrying out of any matter or thing regulated, controlled or required by this Part or the regulations, and may require that the order be carried out immediately or within the time specified in the order.
- (2) Without limiting subsection (1), the authority under that subsection includes authority to make orders as follows:
 - (a) establishing standards that must be met and means and requirements that must be adopted in any work or workplace for the prevention of work related accidents, injuries and illnesses;
 - (b) requiring a person to take measures to ensure compliance with this Act and the regulations or specifying measures that a person must take in order to ensure compliance with this Act and the regulations;
 - (c) requiring an employer to provide in accordance with the order a medical monitoring program as referred to in section 161;
 - (d) requiring an employer, at the employer's expense, to obtain test or assessment results respecting any thing or procedure in or about a workplace, in accordance with any requirements specified by the Board, and to provide that information to the Board;

PREVENTION MANUAL

- (e) requiring an employer to install and maintain first aid equipment and service in accordance with the order;
 - (f) requiring a person to post or attach a copy of the order, or other information, as directed by the order or by an officer;
 - (g) establishing requirements respecting the form and use of reports, certificates, declarations and other records that may be authorized or required under this Part;
 - (h) doing anything that is contemplated by this Part to be done by order;
 - (i) doing any other thing that the Board considers necessary for the prevention of work related accidents, injuries and illnesses.
- (3) The authority to make orders under this section does not limit and is not limited by the authority to make orders under another provision of this Part.

POLICY

Employers and other persons covered by the *Act* have an obligation to comply with the *Act* and regulations. It is not sufficient simply to obey orders of the Board's officers after a violation, injury or disease has occurred.

Where violations of the *Act* or regulations are found, orders will be issued to the persons responsible for the failure to comply.

In operations where cooperation and compliance are generally present, and minor, low hazard violations are noted, Board officers may issue oral orders at their discretion, but shall check back to ensure compliance before leaving the site. In such cases, a brief explanatory note shall be included in the office memo portion of the Inspection Report. Where compliance has not been achieved by the end of the inspection, the Board officer shall issue a written order.



WORKERS' COMPENSATION BOARD OF BC

PREVENTION MANUAL

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE:

October 1, 1999

AUTHORITY:

s.187, *Workers Compensation Act*

CROSS REFERENCES:

HISTORY:

Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999. Consequential changes subsequently made to the restatement of section 187 to reflect the *Workers Compensation Amendment Act, 2002* and to the Explanatory Notes and the cross-references to reflect the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003. **Effective December 31, 2003, this policy incorporates portions of Procedure No. 1.3.3-1 "Issuing Inspection Reports" of the former Prevention Division *Policy and Procedure Manual*.**

APPLICATION:

**RE: Administrative Penalties –
Authority to Impose**

ITEM: D12-196-4

BACKGROUND

1. Explanatory Notes

This policy sets out the non-exclusive ways in which financial penalties may be imposed by the Board for an employer's non-compliance with the occupational health and safety requirements in the *Act* and *regulations*.

2. The Act

Section 73(1):

73 (1) If

- (a) an injury, death or disablement from occupational disease in respect of which compensation is payable occurs to a worker, and**
- (b) the Board considers that this was due substantially to**
 - (i) the gross negligence of an employer,**
 - (ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or**
 - (iii) the failure of an employer to comply with the orders or directions of the Board, or with the regulations made under Part 3 of this Act,**

the Board may levy and collect from that employer as a contribution to the accident fund all or part of the amount of the compensation payable in respect of the injury, death or occupational disease, to a maximum of \$43,778.38.

Section 160(b):

- 160 If an employer fails, neglects or refuses to install or maintain first aid equipment or service required by regulation or order, the Board may do one or more of the following:**
- (b) impose a special rate of assessment under Part 1 of this Act.**

Section 196(1):

The Board may, by order, impose an administrative penalty on an employer under this section if it considers that

- (a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,
- (b) the employer has not complied with this Part, the regulations or an applicable order, or
- (c) the employer's workplace or working conditions are not safe.

POLICY

The Board has authority under the *Act* to:

1. impose an administrative penalty under section 196(1),
2. levy and collect a contribution from an employer under section 73(1), and
3. impose a special rate of assessment under section 160(b).

The Vice-President, Prevention Division, or Board officer assigned in writing by the Vice-President may exercise the authority to levy and collect a contribution under section 73(1) on behalf of the Board. Copies of assignments of authority under this policy can be obtained on request. Authority with respect to sections 160(b) and 196(1) is covered by Item D2-111-1.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE:	December 31, 2003
AUTHORITY:	
CROSS REFERENCES:	See also Administrative Penalties – Criteria for Imposing (Item D12-196-1), Imposing of Levies – Charging of Claims Costs (Item D24-73-1), and First Aid Equipment – Imposing of Special Rate of Assessment (Item D8-160-1).
HISTORY:	This policy incorporates portions of, and replaces, Policy No. 1.4.2 “ <i>Penalty Assessments and Levies</i> ” of the former Prevention Division <i>Policy and Procedure Manual</i> .
APPLICATION:	

APPENDIX "C"

**CONSEQUENTIAL CHANGES TO THREE POLICIES IN
THE *PREVENTION MANUAL***

**RE: Imposition of Levies –
Charging of Claim Costs**

ITEM: D24-73-1

BACKGROUND

1. Explanatory Notes

Section 73 authorizes the Board to charge claims costs to the employer in certain circumstances. The maximum of ~~\$40,000~~ **amount the Board may levy** is adjusted **annually** in accordance with the Consumer Price Index under section 25 of the *Act*. **Starting January 1, 2004, the maximum amount is \$44,468.66.**

2. The Act

Section 73:

(1) If

- (a) an injury, death or disablement from occupational disease in respect of which compensation is payable occurs to a worker, and
- (b) the Board considers that this was due substantially to
 - (i) the gross negligence of an employer,
 - (ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or
 - (iii) the failure of an employer to comply with the orders or directions of the Board, or with the regulations made under Part 3 of this Act,

the Board may levy and collect from that employer as a contribution to the accident fund all or part of the amount of the compensation payable in respect of the injury, death or occupational disease, to a maximum of ~~\$40,000~~ **44,468.66.**

- (2) The payment of an amount levied under subsection (1) may be enforced in the same manner as the payment of an assessment may be enforced.

POLICY

This section may be applied if:

- the grounds for an administrative penalty under Item D12-196-1 are met; and
- a serious injury or disablement from occupational disease, or a death, results from a violation of the regulations.

A claim may be reopened at any time in the future and further costs may be incurred after the decision under section 73(1). The Board will charge the employer:

- the costs incurred up to the time of the decision; and
- any additional amounts that result from matters still under consideration by the Compensation Services Division, the Review Division or the Workers' Compensation Appeal Tribunal.

Where appropriate, the Board will apply the policies and practices set out in the following Items to the charging of claim costs under section 73(1):

- D12-196-1, -2, -3, -4;
- D12-196-8;
- D12-196-10, -11; and
- D16-223-1.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	s. 73(1), <i>Workers Compensation Act</i>
CROSS REFERENCES:	See also Accident Reporting and Investigation – Types of Incidents Covered (Item D10-172); Administrative Penalties – Criteria for Imposing (Item D12-196-1);
HISTORY:	Item developed to implement the <i>Workers Compensation (Occupational Health and Safety) Amendment Act, 1998</i> , effective October 1, 1999. Consequential changes subsequently made to the policy statement to reflect the <i>Workers Compensation Amendment Act (No. 2), 2002</i> , on March 3, 2003. Effective December 31, 2003 a consequential change was made to include a reference to new Item D12-196-4 and the maximum amount referenced in section 73(1) was updated.
APPLICATION:	This policy applies to all decisions to charge claim costs on and after March 3, 2003.

**RE: First Aid Equipment –
Imposition of Special Rate of Assessment**

ITEM: D8-160-1

BACKGROUND

1. Explanatory Notes

The Board may impose a special rate of assessment under Part 1 of the *Act* where an employer fails, neglects or refuses to install or maintain first aid equipment required by regulation or order.

2. The Act

Section 160:

If an employer fails, neglects or refuses to install or maintain first aid equipment or service required by regulation or order, the board may do one or more of the following:

- (a) have the first aid equipment and service installed, in which case the cost of this is a debt owed by the employer to the board;
- (b) impose a special rate of assessment under Part 1 of this Act;
- (c) order the employer to immediately close down all or part of the workplace or work being done there until the employer complies with the applicable regulation or order.

POLICY

Where appropriate, the Board will apply the policies and practices set out in the following Items to the imposition of special rates of assessment for first aid equipment and service under section 160:

- D12-196-1, -2, -3, -4, -5, -6;
- D12-196-8;
- D12-196-10, -11; and
- D16-223-1.

PRACTICE

There is no PRACTICE for this Item.



WORKERS' COMPENSATION BOARD OF BC

PREVENTION MANUAL

EFFECTIVE DATE:

October 1, 1999

AUTHORITY:

s. 160(b), *Workers Compensation Act*

CROSS REFERENCES:

HISTORY:

Effective December 31, 2003, references to two prior policies (Items D12-196-4 and D12-196-5) which no longer exist were deleted and a consequential housekeeping reference to a new policy Item D12-196-4 was added.

APPLICATION:

**RE: Administrative Penalties -
Criteria for Imposing****ITEM: D12-196-1**

BACKGROUND

1. Explanatory Notes

Section 196(1) sets out the criteria for imposing an administrative penalty.

An administrative penalty must not be imposed if the employer exercised “due diligence” to prevent the failure, non-compliance or conditions to which the penalty relates. Item D12-196-10 sets out more information with respect to “due diligence”.

2. The Act

Section 196(1):

The Board may, by order, impose an administrative penalty on an employer under this section if it considers that

- (a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,
- (b) the employer has not complied with this Part, the regulations or an applicable order, or
- (c) the employer’s workplace or working conditions are not safe.

POLICY

The main purpose of administrative penalties and similar levies is to motivate the employer receiving the penalty and other employers to comply with the *Act* and regulations.

The Board will consider imposing an administrative penalty when:

- an employer is found to have committed a violation resulting in high risk of serious injury, serious illness or death;

PREVENTION MANUAL

- an employer is found in violation of the same section of Part 3 or the regulations on more than one occasion. This includes where, though a different section is cited, the violation is essentially the same, for example, citations of sections 8.11 and 20.11 of the *OHS Regulation* for failure to use safety headgear;
- an employer is found in violation of different sections of Part 3 or the regulations on more than one occasion, where the number of violations indicates a general lack of commitment to compliance;
- an employer has failed to comply with a previous order within a reasonable time;
- an employer knowingly or with reckless disregard violates one or more sections of Part 3 or the regulations. Reckless disregard includes where a violation results from ignorance of the *Act* or regulations due to a refusal to read them or take other steps to find out an employer's obligations; or
- the Board considers that the circumstances may warrant an administrative penalty.

If violations or other circumstances requiring consideration of a penalty have occurred, the following additional factors will also be considered in deciding whether to propose or to levy the penalty:

- whether the employer has an effective, overall program for complying with the *Act* and the regulations;
- whether the employer has otherwise exercised due diligence to prevent the failure, non-compliance or conditions to which the penalty relates;
- whether the violations or other circumstances have resulted from the independent action of workers who have been properly instructed, trained and supervised;
- the potential seriousness of the injury or illness that might have occurred, the number of people who might have been at risk and the likelihood of the injury or illness occurring;
- the past compliance history of the employer, including the nature, number and frequency of violations, and the occurrence of repeat violations;
- the extent to which the employer was aware or should have been aware of the hazard or that the *Act* or regulations were being violated;

PREVENTION MANUAL

- the need to provide an incentive for the employer to comply;
- whether an alternative means of enforcing the regulations would be more effective; and
- other relevant circumstances.

PRACTICE

There is no PRACTICE for this Item.

EFFECTIVE DATE:	July 1, 2003
AUTHORITY:	s.196(1), <i>Workers Compensation Act</i>
CROSS REFERENCES:	See also Administrative Penalties – High Risk Violations (Item D12-196-2), Prior Violations and Orders (Item D12-196-3), Authority to Impose Administrative Penalties (Item D12-196-4) , and Due Diligence (Item D12-196-10 and s. 196(6) of the <i>Workers Compensation Act</i>)
HISTORY:	Item developed to implement the <i>Workers Compensation (Occupational Health and Safety) Amendment Act, 1998</i> , effective October 1, 1999. Consequential changes subsequently made to the restatement of section 196 to reflect the <i>Workers Compensation Amendment Act, 2002</i> and to the Explanatory Notes, the restatement of section 196 and the cross-references to reflect the <i>Workers Compensation Amendment Act (No. 2), 2002</i> , on March 3, 2003. Effective July 1, 2003, minor change made to the second bullet of the policy, for congruency with Items D12-196-3 and D12-196-6.
APPLICATION:	

APPENDIX "D"

**POLICY ITEM #113.00 OF THE *REHABILITATION SERVICES & CLAIMS MANUAL*,
VOLUME II ("*RS&CM*") INCORPORATING PORTIONS OF
POLICY ITEM #115.20 OF THE *RS&CM***

#113.00 INTRODUCTION

The general practice followed by the Board is that the cost of any compensation paid out on a claim is charged to the class or subclass of employers of which the worker's employer is a member. These costs are not paid directly by the employer. Rather, the employer will, through the assessment rate, pay a proportion of the total costs incurred on all claims made by employees of all the employers in the subclass. The proportion paid is the proportion which the employer's payroll bears to the total payrolls of all employers in the subclass. This may be adjusted through a system of experience rated assessments.

In certain cases, the class or subclass consists of one major employer so that the employer does directly pay the costs of the claim. Examples are the Canadian National Railway, Air Canada, Canadian Pacific, and the Provincial Government. These are termed deposit classes.

Generally speaking, whether or not an employer was at fault is not a material factor when determining how the costs of a claim are to be charged. The general practice set out above applies both when the employer's negligence or misconduct caused an injury and when the injury was due to circumstances beyond the employer's control.

There are certain provisions in the *Act* which result in exceptions to the above rule. An individual employer or the class or subclass may be relieved of the costs of compensation incurred on a particular claim. Alternatively, an individual employer may be charged with costs additional to the employer's ordinary liability as a member of a class or subclass. None of these special relieving or charging provisions apply to claims by Federal Government employees.

The amount of costs attributed to an employer are disclosed to an employer in the cost statements which are sent regularly. These list the claims concerned and the amount of costs incurred on each.

EFFECTIVE DATE: December 31, 2003 (as to the third paragraph which incorporates portions of, and replaces, policy item #115.20 "Significance of Employer's Conduct in Producing Injury" of this manual.)