

**SUBMISSION TO THE
WORKERS' COMPENSATION BOARD
POLICY AND RESEARCH DIVISION
ON CHANGES TO THE OCCUPATIONAL HEALTH
AND SAFETY REGULATION**



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VANCOUVER BC

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INTRODUCTION

Today, on behalf of 70,000 workers, represented by the Provincial Division of the Canadian Union of Public Employees (CUPE BC), we are here to offer our comments on the proposed changes to the Occupational Health and Safety Regulation. We thank the committee for the opportunity to do so, it is important to hear concerns from as many stakeholders as possible.

CUPE members' work in diverse environments. As well, we represent the vast majority of workers who work in the cities, towns, and regional districts. We also represent smaller sectors such as entertainment facilities, golf courses, transportation workers, ambulance paramedics and such organizations such as the BC assessment authority and others. We work in Schools, Colleges and Universities, Libraries and Social Services. Each of these sectors face a wide range of issues that have to be addressed under the Occupational Health & Safety Regulation.

As a result of our diversity most of the proposed changes to the Occupational Health & Safety Regulation have an impact on workers we represent, we feel the need to ensure that amendments to the regulation should be sound in judgement and offer a safe environment for all.

CUPE BC congratulates the Workers' Compensation Board for ensuring that these changes have widened participation through public hearings, which have proven to be effective in the past.

Last year (2005) was a disastrous year for workers in British Columbia. 188 workers lost their lives due to a fatality or work related illness. These rates were the highest they have been in the past 25 years. This is a 40% increase from the previous year (2004). Although the Workers' Compensation Board contends that all these deaths were preventable, changes in *Prevention* seems only to be an afterthought.

The Workers' Compensation Board notes that more workers in the workplace means a higher amount of fatalities and injuries, which we believe does not need to be the case. We would propose that many fatalities and injuries arise from decreased enforcement. As well we have seen a 44% drop in workplace inspections which compounds the problem.

In the 2005 Annual Report and 2006-2008 Service Plan from 'Worksafe BC', the Message from the President and Chief Executive Officer, David Anderson, says that:

"In the coming years we will continue to set high standards for ourselves in these important areas and to work toward improvement. We are paying close attention to recent troubling indicators and will

focus more WorksafeBC resources on programs to enhance our prevention and enforcement strategy, and reduce the injury rate”

Although Prevention is an area that we all know saves lives, WorksafeBC only dedicated 3% of its overall budget to this cause.

It goes without saying that, as members of the public, workers and employers, we are all responsible for ensuring that we work safely. However, this cliché gives little solace to workers killed or injured in the workplace or their families. It does little to reduce the economic consequences of dramatically rising cases of injury or death in the workplace and more importantly, the absolute devastation to families and their community where such instances occur. It would help if WorksafeBC would dedicate the money necessary to ensure that we have enough prevention officers to do a thorough job, instead of making their assignments so massive that there is little time allotted to get to workplaces that have been deemed the targeted sectors¹, let alone all workplaces.

This year we must dedicate our time and resources to education and prevention of workplace injuries. We must specifically target young workers and our aging workforce. As our most experienced workers are retiring and young workers enter our workforce, let's be vigilant in ensuring that they are properly trained in safe practises and procedures, so that we don't have a repeat of last year when we lost 11 young workers to workplace fatalities. Let us also be cognisant that education is not geared to workers alone but there should be a greater emphasis on education for employers as well.

The numbers have shown us that young workers are at risk when they enter the workplace for the first time. There is no emphasis on proper training and the employers do not enforce policies. Students in school must be educated as part of their career prep on the basic rights of workers and how to follow safe procedures when working at any job. Students should be educated to know what questions to ask when starting a new job.

Enforcement is critical to let employers know that a disregard for regulation will no longer be tolerated. A recent example of a young worker killed while working alone in a gas station is a good example where there seem to be no consequences and as a result tragedies have and will continue to happen.

¹ [Forestry and Fishing; Oil and Gas; Manufacturing; Construction; Transportation and Warehousing and Health Care (part of the service sector).]

REVIEW OF THE PROPOSED AMENDMENTS

PART 1: Definition

(Part 26: Forestry Operations, Section 26.11, Dangerous trees)

GENERAL COMMENTS:

We applaud the Workers' Compensation Board for adding the definition of '**hazard area**', under Part 1, which will now apply across the province to all workplaces.

HAZARD AREA

The second proposed amendment is specific to the Forestry Operations and pertains to the hazard area of '**Dangerous Trees**'. Although we understand that the Workers' Compensation Board has recognised and approved a training course from the Wildlife/Danger Tree Assessors ("WDTA") that prevents work from being done if wind speed exceeds 40 km/h, we feel this does not go far enough. There are also other workplaces where dangerous trees are part of the worksite. The regulation should include all work involving dangerous trees.

Currently section 26.11(6)(b) says, "**no work will be done within reach of the tree when wind speed exceeds 20 km/h (12 mph)**". We have seen no evidence that would tell us that increasing the percentage of wind speed would create a safer work environment, in fact, just the opposite seems to be the case. This change in our view is troublesome at best and absolutely unacceptable. We reject out of hand any such suggestion and would suggest the board review the regulation with the intention of lowering the factor rather than increasing it.

PART 4: General Conditions

(Section 4.3, Safe machinery and equipment)

GENERAL COMMENTS:

The Workers' Compensation Board is seeking to make changes to section 4.3, Safe machinery and equipment. The intent appears to restrict manufacturers from solely prescribing the use of their own products. The board contends that the regulation currently is trade restrictive and has the effect of prohibiting the use of after market or competing products, which may be safer, cheaper or more reliable.

SAFE MACHINERY AND EQUIPMENT:

The Workers' Compensation Boards position in proposing to remove the manufacturers' recommendations from both sections, gives employers a flexibility to find cheaper, safer and more reliable alternative products. On the surface it sounds workable, but we do not agree. We question how the Board will ensure that employers are not modifying equipment to the extent it could pose a health and safety risk to workers operating the equipment.

The Board contends that the change will not affect an employer's obligations to ensure replacement parts are appropriate, meet applicable standards and are properly installed. Who will police this in workplaces? Are employers now becoming experts in appropriate replacement parts and installation?

The position of CUPE BC is that by amending this section, the regulation is being weakened further and putting lives at risk with the potential of causing machine malfunction and injury. There are still many questions that need to be answered. We would recommend the board step back from any changes in this regard until all such concerns can be addressed.

PART 5: Chemical and Biological Substances (Section 5.49, Excursion limits)

GENERAL COMMENTS:

This regulation was significantly weakened with the deletion of the words "***is provided only with***" in a previous regulation review. The goal of WorkSafe BC should be to lower exposure limits wherever and whenever possible.

EXCURSION LIMITS:

CUPE BC supports the amendment of section 5.49, which removes the word "***has***" and inserts the wording "***is provided only with***". This wording was previously removed and is now being reconsidered for insertion. The amendment will hopefully assist in ensuring that short-term exposure levels are not exceeded when working with a chemical and biological substance.

The Workers' Compensation Board should strive in lowering the current short-term exposure limits to avoid overexposure to the hazard.

**PART 6: Substance Specific Requirements
(Section 6.33, definitions and Section 6.36, Control Procedures)**

GENERAL COMMENTS:

CUPE BC supports the British Columbia Nurses Union in its submission, which is attached as Appendix 1.

DEFINITIONS:

The inclusion of the definition of "**safety-engineered needle**", to include a "**self-sheathing needle device and a retractable needle system**", is long overdue. However, this move does not begin to scratch the surface of the problem. CUPE would recommend a task force made up of Safety Committees or workers who frequently work with these devices to work on guidelines that will be effective for workers in the field.

Secondly, although changing the language under section 6.36 "**Controls**" to "**eliminate first and minimize the potential for occupational expose to bloodborne pathogen or other biological hazards**", we would ask whether the impact of such a change will only affect those who work in medical facilities. We are well aware the problem goes beyond just those sites.

CONTROL PROCEDURES:

The insertion of **new** Section 6.36 (1.1), does not go far enough.

The section reads: "On and after January 1, 2008, when hollow-bore needles are used in a workplace access a vein or artery for the purpose of collecting blood or caring for or treating a person, the employer must ensure that

- (a) workers use only safety-engineered needles or substitute hollow-bore needles with needleless devices, unless it is not safe or practicable to do so, and*
- (b) safe work procedures and practices relating to the use of those safety-engineered needles or needleless devices are implemented."*

Our first concern is the implementation date. Why does the Workers' Compensation Board feel that we need to take 2 years to implement these safety devices? The second concern is that the draft regulation does not require

employers to provide the safest devices available. The regulation as drafted would allow employers to buy the cheapest product, not necessarily the safest.

We would also like to see included in this regulation non-hollow bore needles such as scalpels and suture needles. The regulation should apply to all medical sharps.

**PART 8: Personal Protective Clothing and Equipment
(Section 8.24, High visibility apparel)**

GENERAL COMMENTS:

In this section the Workers' Compensation Board is proposing to delete section 8.24(1) "**High visibility apparel**" and reposition the requirements under Part 18 of the Occupational Health and Safety Regulation, which deals with Traffic Control.

Following a public consultation, the Workers' Compensation Board held a tripartite meeting to discuss its feedback on the reference of "**qualified worker**" and what the designated training course should entail.

HIGH VISIBILITY AND DISTINGUISHING APPAREL:

The Workers' Compensation Board seeks to repeal Section 8.24 of the Occupational Health and Safety Regulation, and have the "**high visibility apparel**" addressed in the **new** proposed Part 18, Traffic Control.

Section 8.24(2) and 8.24(3) have included the wording, "**WCB Standard Personal Protective Equipment Standard 2-1997, High Visibility Garment**". We support this amended section as it provides greater clarity and seems also to bring some consistency to all workers wearing protective apparel.

TRAFFIC CONTROL:

As mentioned above, this General requirements section will be amended to include the definitions in section 18.1 to include the definition of "**traffic**", "**traffic control**" and "**traffic control person**" or "**TCP**".

We do not agree with the removal of the words "**Employers Responsibility**" from Section 18.2. If it is the intention of the board to better define who the employer is, then the changes proposed in Sections 18.3, 18.4 and 18.5 make sense and addresses in greater detail the importance of appropriate training prior

to workers being assigned the duty of Traffic Control Person. We would agree with such a change.

However, we would encourage the Workers' Compensation Board to be very selective in its approval of certified training courses, making sure they do not deviate from the current approved Traffic Control Manual.

It appears in the new Section 18.6 that the Board is putting greater emphasis on the use of signs and other traffic control devices before assigning a Traffic Control Person to control traffic. This will hopefully assist in greater worker safety.

Section 18.7 ensures that Employers make adequate arrangements for the TCP assigned to have breaks at reasonable intervals throughout his/her shift. This is a positive change, however, some work will need to be done to make sure employers have a policy in place for replacement of "TCPs" on breaks.

CUPE BC is in agreement with the relocation from the wording in Section 8.24(1) to Section 18.9 and 18.10, which has clarified all the equipment necessary for Day and Night operations, the inclusion of lower leg bands and retro reflective tape across the top and sides of the safety headgear.

Sections 18.11 to 18.17 have been changed to reflect greater clarity and we are in agreement with the changes.

PART 9: Confined Spaces

(Section 9.11, Qualifications, Section 9.18, Isolation and Section 9.22, Alternate procedure)

GENERAL COMMENTS:

CUPE BC is in agreement with the proposed changes to the above noted sections, which clarifies and sets out that all persons completing a hazard assessment or drafting of safe work procedures must be qualified and have experience in the recognition, evaluation and control of confined space hazards. However, the position of the board has been that this will also ensure employers due diligence.

HAZARD ASSESSMENT AND WORK PROCEDURES

This has incorporated whom the Board deems to be qualified in recognising; evaluating and controlling confined space hazards through an appropriate combination of education, training and experience.

LOCKOUT AND ISOLATION:

In principle we understand the Board's intent with the amended Section 9.18, which brings greater clarity and consistency to the regulation.

ALTERNATE PROCEDURE:

CUPE is adamantly opposed to this proposed change of wording from "**possible**" to "**practicable**", furthermore, such wording should be deleted throughout the regs. Doing what is possible is already weak, but to suggest that employers do what is "**practicable**" to prevent injury or death is deplorable and insult to workers generally. Although the term practicable exists under the Occupational Health and Safety Regulation, employers will frequently find ways of addressing how it was not practicable to either implement or change a procedure due to cost, change, etc. We should be making the language compulsory and not allow employers a way out of living up to their responsibilities.

PART 13: Ladders, Scaffolds and Temporary Work Platforms (Section 13.23, Testing)

GENERAL COMMENTS:

The Board ensuring that equipment is inspected at annual intervals as a way to ensure greater worker safety is a move long overdue. We respectfully submit however, that "**guidelines**" have not in general inspired much change. Putting this change in regulation itself would go much further.

PART 14: Cranes and Hoists, Equipment Operation (Section 14.34, Operator Qualifications; Section 14.91, Hoisting Ropes)

GENERAL COMMENTS:

CUPE BC supports the creation and development of a Board approved certification process for those working on certain kinds of cranes and boom trucks. We understand that since the Industry Training and Apprenticeship Commission was abolished the process of being 'qualified' has become quite cumbersome. Worker and Employer communities have suggested that the Occupational Health and Safety Regulation must include a requirement for operators to complete a mandatory, standardized training and certification program administered by a third party.

EQUIPMENT OPERATIONS:

In Section 14.34(2) the Board has changed the word "**worker**" to "**person**". We understand that this is intended to apply to anyone who operates a crane or hoist in a workplace under WorksafeBC jurisdiction. For example, the change addresses owner/operators who are not workers under the Compensation Act.

The changes to the suggested certification process are reflected in the new Section 14.34.1.

HOISTING ROPES:

Cranes and hoists that shift considerable weights through the day should be equipped with rope that is less susceptible to abrasion and fatigue problems.

PART 20: Construction, Excavation and Demolition (Section 20.4, Safe Access)

CUPE BC is in agreement with the changes proposed to Section 20.4 and its accompanying Guideline.

PART 24: Diving, Fishing and Other Marine Operations (Section 24.93, requirements for sensors and alarms; Section 24.104, Drums and Section 24.106, Work Areas)

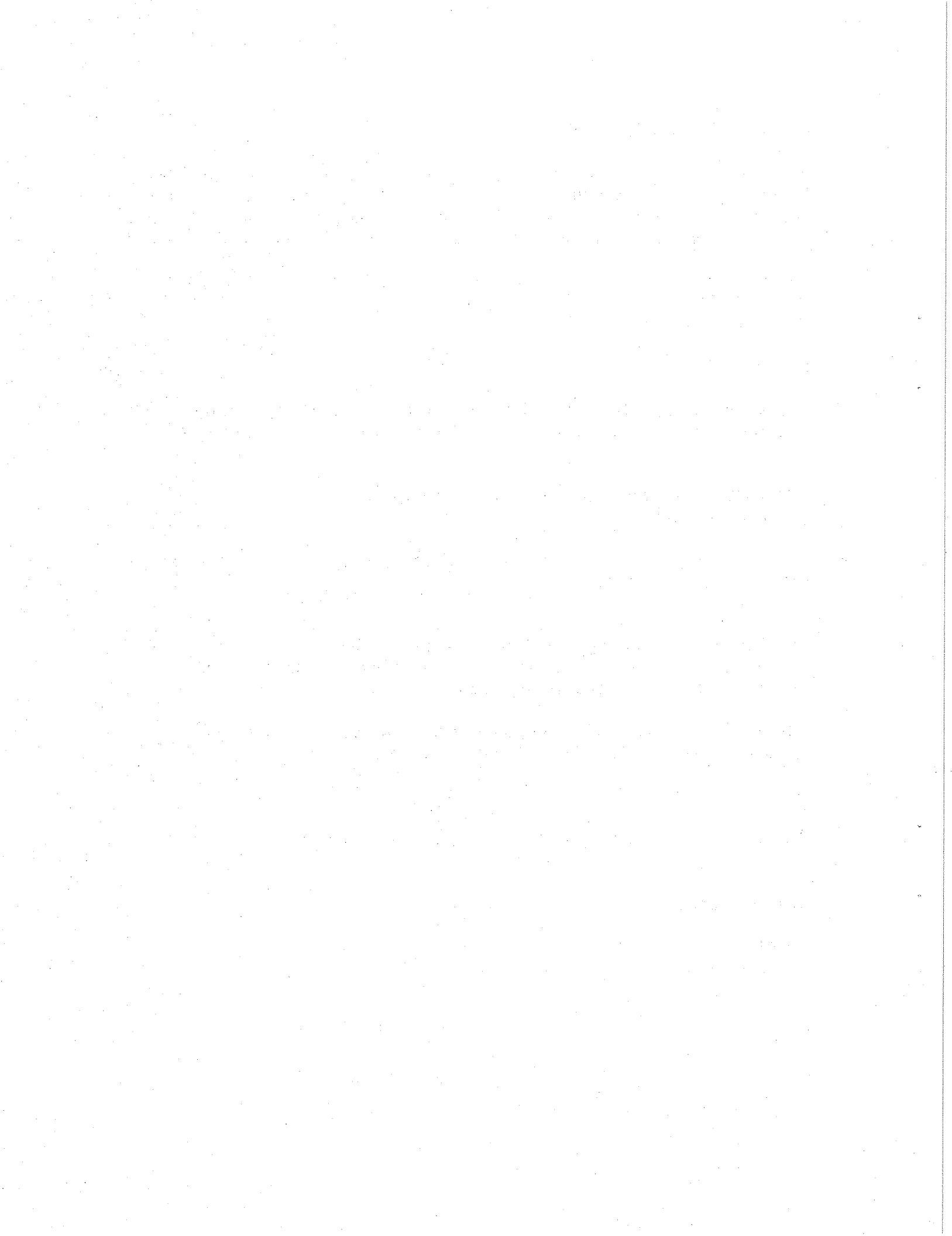
CUPE BC supports the changes to the Occupational Health and Safety Act to include greater protection of workers aboard a fishing vessel.

Respectfully submitted:

CUPE BC Division

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Summary of concerns with WCB proposal for regulating protection from unsafe medical sharps

There are eight concerns that BCNU has with the proposal

- 1.** No requirement for preference for safer devices such as blunts and retractables
- 2.** Applies only to medical work places
- 3.** Only references vascular hollow bore needles
- 4.** Misses all subcutaneous devices
- 5.** Misses all non-hollow bore needles such as scalpels and suture needles
- 6.** Has no provision for logging medical sharps injuries
- 7.** No consultation with the joint safety committee or worker in selecting devices
- 8.** Lacks a neutral space concept in operating rooms and the use of no hand to hand methods

The regulation needs to include a hierarchy for selection of safety devices giving preference to the types that are most effective. A blunt or retractable needle can not puncture the skin after the safety device has been activated. A manual guarded device still has potential for contact with the sharp. These inferior and cheaper devices are not as safe. Preference should be given to the safer devices and is a principle used for other safety devices under regulation such as for exposure to hazardous substances under OH&S Regulation 5.55.

There is no reasonable purpose to restricting this regulation to medical workplaces. Many workers in non-medical workplaces are exposed to medical sharps. This includes emergency personnel, security, maintenance and cleaners. Those who clean parks and streets, police and firefighters do not fit the definition of a person that works in a health care work place. The contracting out of many non-clinical services leaves it questionable as to whether even employees doing cleaning, food services or security under a contractor for a health care facility are even covered under the regulation. Those workers do not fall under the category of health care for the WCB classification system.

Limiting the regulation to hollow bore needles used for vascular access will result in not protecting against very large numbers of medical sharps injuries. Statistics compiled by the Occupational Health and Safety Agency for Health Care (OHSAH) for four Health Authorities show that significant numbers of medical sharps injuries do not fall into the "vascular" type of uses. Many injections are done subcutaneously (into the skin rather than or artery or vein) these injections pose a risk of transmission of blood borne pathogens. There are other types of medical sharps besides hollow bore needles, too. Those include scalpels, suture needles and anything else that might produce a puncture wound that would expose a worker to blood or other potentially infectious material. The regulation must apply to all medical sharps, not just those limited ones that are vascular.

Many medical devices can be used for vascular and non-vascular purposes. A syringe can be used to inject medicine into skin or muscle; the same syringe could be used instead to inject medicine into a vein. In the first circumstance it is not vascular in the second it is. The rational approach is to apply the regulation to all medical sharps, not just the very narrow category of hollow bore needles for vascular use.

There is no provision in the WCB proposal for logging medical sharps injuries. Documenting these injuries has been and continues to be a significant problem. The WCB itself has no idea what the total number of injuries is. The only information they have in their systems is the number of wage loss injuries. This is totally inadequate. In the US they have a requirement to document sharps injuries. Several years ago some US jurisdictions implemented an EPINET system that compiles comprehensive data on sharps injuries. In BC OHSAH has worked with four health authorities to create a similar system here. The data acquired shows the type of sharp, whether the injured person was an original user, the purpose of the sharp, at what point in its use the injury occurred and other very valuable data. The use of this system in four BC health authorities demonstrates that such logging of injuries can be readily done and provides important information that is readily available. This should become the standard for BC. **A requirement for logging injuries should be part of the regulation as was proposed by the Unions.**

Devices need to be selected in consultation with those people that will use them. The joint health and safety committees include the management and the workers from the various sectors of the workforce. It is through these committees that consultation should occur. Devices need to be chosen on the basis of those that most effectively do the job they are intended for and provide the highest level of protection. This consultation helps to ensure the success of the changeover to safety devices and the prevention of injury. If the devices perform the job poorly they will not be accepted by those that have to use them. **Failure to include provisions for consultation will result in some circumstances devices being chosen on the basis of cost only by persons with no knowledge or appreciation for their use.**

The WCB proposal contains no requirement for training or education in the use of the new safety engineered medical devices. In some of the health authorities that have already done some work on moving to safety engineered medical devices there are good examples of the need for training and education in this process. Those workplaces that have integrated training and education in the use of SEMDs have done much better in the changeover than those that have not. You can not expect people to be able to effectively use and adopt new equipment without the right training and education. The regulation needs to include this component.

Finally, **the union proposal contains provisions for using no hand to hand methods and a neutral space concept in operating rooms.** Why did the WCB not include this provision in their proposal? If new regulations to prevent exposure to blood born pathogens from medical sharps are being introduced including best practices in operating rooms makes sense.

We want to see a regulation in place requiring the use of Safety Engineered Medical Devices. The proposal by the WCB is a step in the right direction. The proposal they have put forward desperately needs significant improvement.

The holes in the WCB proposal demonstrate the failure of their current process for Regulation Review. There should be consultation with stakeholders as part of the process to develop the proposal for Regulation Review prior to going to the WCB Board of Directors.

This was the process that was in place through the 1990 when the entire OH&S Regulation was successfully revised. Since this process was abandoned in 2002 for solely internal WCB proposals to the WCB Board of Directors there have been repeated failures. Proposed amendments to the workplace violence regulation that failed to move ahead last year are another example where the lack of stake holder consultation has derailed needed improvements.

Stakeholders asked for prior consultation on the proposed regulation. Our discussions with employers indicate they would likely have been open to prior consultation too. Meanwhile the WCB was telling the union group our proposal is coming along and the WCB wouldn't show it to us until it had been approved by the Board of Directors. **Consultation with stake holders could have ensured a high quality proposal was presented to the Board of Directors to go to public hearing.** Now there needs to be comprehensive consultation with stakeholders to fix this badly flawed proposal. It would have been so much easier to talk to the people that would be affected by the regulation first.