RESOLUTION OF THE BOARD OF DIRECTORS

RE: Stop Work Orders Policy (D12-191-1)

WHEREAS:

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

AND WHEREAS:

On May 14, 2015, the Lieutenant Governor of the Province of British Columbia gave Royal Assent to the Workers Compensation Amendment Act, 2015;

AND WHEREAS:

Changes to the stop work order provisions in section 191 of the Act that came into force on May 14, 2015:

(a) expand the criteria and lower the threshold for issuing stop work orders, and

(b) allow WorkSafeBC to stop work, or prevent work from starting, at multiple locations for an employer;

AND WHEREAS:

Pursuant to BOD Resolution No. 2015/05/27-02, the BOD approved the amendment of Item D12-191-1 Stop Work Orders of the Prevention Manual on an interim basis that expires on December 31, 2015;

AND WHEREAS:

Changes to Policy D12-191-1 of the Prevention Manual will provide additional guidance for using the new provisions;
AND WHEREAS:

The Policy, Regulation and Research Division has undertaken stakeholder consultation on this issue and has advised the BOD on the results of the consultation;

THE BOARD OF DIRECTORS RESolves THAT:

1. Item D12-191-1 of the Prevention Manual, as approved by BOD Resolution 2015/05/27-02 is amended as set out in Appendix A of this Resolution, and applies to all inspections that occur on and after January 1, 2016.

2. This resolution is a policy decision of the Board of Directors.

DATED at Richmond, British Columbia, December 16, 2015.

By the Workers’ Compensation Board

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JOHN BECKETT, CRSP, CHRP
CHAIR, BOARD OF DIRECTORS
BACKGROUND

1. Explanatory Notes

WorkSafeBC issues stop work orders to protect the health and safety of workers when they will be at risk until the employer complies with the Act and Regulation. Stop work orders are a compliance tool, similar to OHS Compliance Orders.

WorkSafeBC has a number of tools to address non-compliance with the Regulation and Part 3 of the Act. If these tools effectively protect workers in the circumstances, then a stop work order will not be necessary.

The Act provides that a stop work order may be issued when:

(a) there are reasonable grounds to believe that there is a high risk of serious injury, serious illness or death at a workplace, or

(b) an employer

(i) violates a section of the Act or Regulation;

(ii) within the last 12 months, had previously violated the same section and failed to comply with the resulting order; and

(iii) there are reasonable grounds to believe that there is a risk of serious injury, serious illness or death.

The Act also provides that, if a stop work order is issued, WorkSafeBC may also stop work at other or all workplaces of an employer (a “stop operations order”) if WorkSafeBC has reasonable grounds to believe that:

(a) the same or similar unsafe working or workplace conditions exist, or

(b) would exist,

at the other workplaces.

WorkSafeBC has a number of tools to address non-compliance with the Regulation and Part 3 of the Act. If these tools effectively protect workers in the circumstances, then a stop work order will not be necessary.
This policy provides guidance regarding:

(a) when to consider a stop work order,
(b) when a stop work order is appropriate,
(c) the scope of a stop work order (area covered),
(d) the use of a stop operations order, and
(e) the duration of a stop work order.

2. The Act

Section 191:

(1) The Board, in accordance with subsection (1.1), may order that

(a) work at a workplace or any part of a workplace stop until the order to stop work is cancelled by the Board, and

(b) if the Board considers this is necessary, the workplace or any part of the workplace be cleared of persons and isolated by barricades, fencing or any other means suitable to prevent access to the area until the danger is removed.

(1.1) The Board may make an order under subsection (1)

(a) if the Board has reasonable grounds for believing there is a high risk of serious injury, serious illness or death to a worker at the workplace, or

(b) if

(i) an employer

(A) has failed to comply with a provision of this Part or the regulations, and

(B) within the 12 month period immediately preceding the failure to comply as set out in clause (A), has failed to comply with

(I) the same provision described in clause (A), and

(II) an order respecting the failure to comply described in subclause (I), and

(ii) the Board has reasonable grounds for believing there is a risk of serious injury, serious illness or death to a worker at the workplace.
APPENDIX A TO RESOLUTION 2015/12/16-03

(1.2) If the Board makes an order under subsection (1), the Board, with respect to another workplace or any part of another workplace whose employer is the same as the employer at the workplace or any part of the workplace in respect of which the order under subsection (1) was made, may make an order, in accordance with subsections (1.3) and (1.4),

(a) that

(i) work at the other workplace or any part of the other workplace stop until the order to stop work is cancelled by the Board, and

(ii) if the Board considers this is necessary, the other workplace or any part of the other workplace be cleared of persons and isolated by barricades, fencing or any other means suitable to prevent access to the area until the danger is removed, or

(b) prohibiting the employer from starting work at the other workplace or any part of the other workplace.

(1.3) The Board may make an order under subsection (1.2) if the Board has reasonable grounds for believing,

(a) with respect to an order made under subsection (1.2)(a), that, at the other workplace or any part of the other workplace in respect of which that order is made, the same or similar unsafe working or workplace conditions exist as at the workplace or any part of the workplace in respect of which the order under subsection (1) was made, or

(b) with respect to an order made under subsection (1.2)(b), that, at the other workplace or any part of the other workplace in respect of which that order is made, the same or similar unsafe working or workplace conditions would exist as at the workplace or any part of the workplace in respect of which the order under subsection (1) was made.

(1.4) In making an order under subsection (1.2), the Board is not required to specify the address of the other workplace or any part of the other workplace in respect of which the order is made.

(2) If an order is made under subsection (1)(b) or (1.2)(a)(ii), an employer, supervisor or other person must not require or permit a worker to enter the workplace or part of the workplace that is the subject of the order, except for the purpose of doing work that is necessary or required to remove the danger or the hazard and only if the worker

(a) is protected from the danger or the hazard, or

(b) is qualified and properly instructed in how to remedy the unsafe condition with minimum risk to the worker's own health or safety.
(3) Despite section 188(1), an order under this section
   (a) may only be made in writing, and
   (b) must be served on the employer, supervisor or other person having
       apparent supervision of the work or the workplace.

(4) An order under this section expires 72 hours after it is made, unless the order
    has been confirmed in writing by the Board.

POLICY

A. When to Consider a Stop Work Order

The Act says that WorkSafeBC may consider a stop work order when:

(a) there are reasonable grounds to believe that there is a high risk of serious
    injury, serious illness or death at a workplace (high risk is defined in Policy
    D12-196-2), or

(b) an employer
   (i) violates a section of the Act or Regulation;
   (ii) within the last 12 months, had previously violated the same section
        and failed to comply with the resulting order; and
   (iii) there are reasonable grounds to believe that there is a risk of
        serious injury, serious illness or death.

An officer will determine whether there are reasonable grounds for a stop work order
based on knowledge and experience along with any immediately available advice and
assistance. An officer may make a decision on the spot to immediately protect workers
and then make further inquiries afterwards.

When there are reasonable grounds for a stop work order, WorkSafeBC must then
consider whether a stop work order is appropriate in the circumstances as set out in B
below.

B. Appropriateness of a Stop Work Order

A stop work order is not necessary in every case where one is possible under the Act.
WorkSafeBC will generally issue a stop work order when the safety concern cannot be
quickly remedied and other measures are insufficient to protect the workers in that
workplace. The following are some examples of the circumstances:
(a) The equipment needed to comply is not at the workplace.

*Work cannot safely continue until the employer obtains the needed equipment.*

(b) The employer has not trained the workers to perform the work safely.

*Work cannot safely continue until the employer gives workers the necessary training.*

(c) The employer does not have an effective system of supervision in place to ensure that work is performed safely.

*Work cannot safely continue until the employer implements an effective system of supervision.*

(d) The documentation necessary to determine whether the work is safe is unavailable.

*This could include things such as a hazardous materials survey and confirmation in writing, instructions for an excavation, or confined space hazard assessment and entry procedures.*

(e) The employer has a history of non-compliance with OHS Compliance Orders.

*WorkSafeBC may not be able to rely on the employer to remedy the violation before resuming work and it may be necessary to stop work until the employer demonstrates that they have taken the required actions.*

(f) The employer has expressed the intent not to comply with OHS Compliance Orders.

*WorkSafeBC will be unable to rely on the employer to address the violation and work must be stopped until WorkSafeBC can verify that the employer has taken the required precautions.*

(g) The employer cannot be reached or identified and work is pending that will pose a high risk to workers.

*For example, a demolition site contaminated with asbestos would pose a high risk to untrained and unprotected workers. It may be necessary to issue a stop work order at the workplace until WorkSafeBC can verify that the employer has taken the required precautions.*

If a stop work order is appropriate, WorkSafeBC must then consider:

(a) the scope of that stop work order as set out in C, and
(b) whether a multiple workplace stop work order is appropriate as set out in D.

C. Scope of a Stop Work Order (Area of Workplace Involved)

If WorkSafeBC decides to issue a stop work order, it must carefully consider the scope of the order.

The Act provides that a stop work order may apply to a workplace or any part of the workplace.

The scope of a stop work order must be sufficient to ensure that the work posing a risk to workers is halted. However, the stop work order should not impact work or those parts of the workplace where the risk underlying the stop work order is not evident and work is being done in a safe manner.

The following are two examples of situations where a limited scope order might be appropriate:

1. A large construction site may have a variety of work practices occurring simultaneously, including earth moving work in one section of the site, and assembly of formwork in another section of the site. If WorkSafeBC observes a failure to wear fall protection while assembling formwork, the stop work order should be restricted to that part of the workplace where formwork assembly is occurring.

2. A warehouse may have an area where unsafe stacking of items may pose a significant hazard to workers in one area of the warehouse but other parts of the warehouse would be unaffected. In that case, a stop work order would be restricted to the area where the hazard exists.

D. Stop Operations Order

The Act provides that WorkSafeBC may stop work or prohibit work from starting at other workplaces (or parts of those workplaces) of the same employer who was issued a stop work order. This is referred to in this policy as a stop operations order. The Act also provides that WorkSafeBC must have reasonable grounds for believing that the same or similar unsafe working or workplace conditions exist, (or would exist), at the other workplaces.

WorkSafeBC will consider the following in relation to the Act requirements for a stop operations order:

(a) Same employer:

The employer must be the same employer at each workplace where the stop work order (or prohibition from starting work) will take effect. In multiple employer workplaces, WorkSafeBC must ensure that the stop
work order applies only to the same employer or those parts of the workplace where the employer has (or would have) responsibility for unsafe working or workplace conditions.

(b) Same or similar unsafe working or workplace conditions

To determine whether there are reasonable grounds to believe that unsafe working or workplace conditions at other workplaces are, or would be, the same or similar (or would be) in respect to the stop work order made on the employer, WorkSafeBC will consider the following factors:

- Whether the employer performs, (or would perform), substantially the same or similar work at other workplaces.
- Whether the employer uses, (or would use), the same or similar work practices or equipment at other workplaces.
- Whether the same or similar working or workplace conditions exist, (or would exist), at other workplaces.

E. Duration of a Stop Work Order

Once a stop work order is imposed, the duration of a stop work order will vary from minutes to hours to days depending on the circumstances. WorkSafeBC may cancel a stop work order as soon as the employer has remedied the unsafe working or workplace conditions and a stop work order is no longer required to protect workers. In some circumstances, a stop work order could be cancelled within minutes.

For example, WorkSafeBC may issue a stop work order to prohibit work in a stairway under construction, due to the risk of collapse. WorkSafeBC could then cancel the order later that day after the employer obtained an engineering report and took the remedial action recommended in the report.

In order for WorkSafeBC to cancel a stop operations order, the employer must demonstrate that the employer has remedied the unsafe working or workplace conditions at all workplaces to which the stop work order applies.

In order for WorkSafeBC to cancel a stop operations order prohibiting work from starting at another workplace, the employer must demonstrate that it has taken the appropriate actions to ensure that the unsafe working or workplace conditions will not arise at that other workplace.

PRACTICE

The Act requires that a stop work order must be in writing. In most cases, WorkSafeBC will initially post a handwritten stop work order placard at the site before providing an inspection report containing the stop work order. However,
there can be some delay since an officer generally needs to return to their vehicle and
must spend some time to prepare and issue the order on an inspection report.

In circumstances where there is any concern that work will resume before an inspection
report is issued, if there will be a delay in issuing an inspection report, WorkSafeBC will
initially post a handwritten stop work order placard at the site and replace it when the
inspection report containing the stop work order is complete.

The Act provides that a stop work order expires after 72 hours unless the order has
been confirmed in writing by the Board. OHS Guideline G-D12-188(4)-2 states that the
Senior Vice President, Operations, and Vice President, Prevention Services have the
authority to:

(a) confirm a stop work order beyond 72 hours, and

(b) approve a stop operations order.

EFFECTIVE DATE: May 27, 2015 January 1, 2016
AUTHORITY: s.191, Workers Compensation Act
CROSS REFERENCES: Amended effective January 1, 2016 to change the
paragraph order in the Explanatory Notes and make wording changes to sections D (Stop Operations Orders),
E (Duration of a Stop Work Order) and the Practice section.
HISTORY: Interim policy effective May 27, 2015 applies to all
inspections occurring on and after May 27, 2015 until the
end of December 31, 2015. Amended effective May 27, 2015
following the amendments to Section 191 of the Workers
Compensation Act to address:

(a) when to consider a stop work order,
(b) when a stop work order is appropriate,
(c) the scope of a stop work order,
(d) the use of a stop operations order, and
(e) the duration of a stop work order.

Housekeeping changes effective September 15, 2010 to delete
practice reference and make formatting changes.
APPLICATION: This policy applies to all inspections that occur on and
after January 1, 2016.